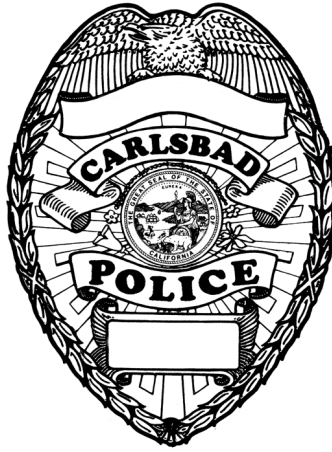


CARLSBAD POLICE DEPARTMENT



INTERNAL AFFAIRS INVESTIGATION

IA CASE #: 12-17

EMPLOYEE(S): Officer Jesse Flores #5355

INVESTIGATOR(S): Sgt. Jason Jackowski #5237

CONFIDENTIAL

THE CONTENTS OF THIS INVESTIGATION ARE PROTECTED UNDER
THE PROVISIONS OF CALIFORNIA PENAL CODE § 832.7

CONFIDENTIAL

**CARLSBAD POLICE DEPARTMENT
INTERNAL AFFAIRS INVESTIGATION #12-17**

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CARLSBAD POLICE DEPARTMENT INTERNAL AFFAIRS INVESTIGATION #12-17

Date Opened: 05/03/2012
Date of Incident: 04/27/2012
IA Case #: IA12-17
Related Case: N/A
Complainant: Sergeant Chris Boyd
Investigator(s): Sergeant Jason Jackowski
Personnel Involved: Officer Jesse Flores

INTRODUCTION

On 05/03/2012 I was contacted by Sergeant Greg Koran. He stated that he had received a *Supervisor's Complaint Summary* (attached) that had been written by Sergeant Chris Boyd. Sgt. Koran stated that he had received the complaint in person from Lt. Matt Magro and Captain Bill Rowland. Sgt. Koran stated that the complaint outlined an allegation of providing misinformation and untruthfulness on the part of Officer Jesse Flores to Carlsbad Police Department supervisors. Officer Flores is currently assigned to the North County Gang Task Force.

Sgt. Koran advised me that Capt. Rowland had advised him that Officer Flores was to be immediately placed on paid administrative leave while the allegations were investigated. I contacted Officer Flores and ordered him to report to my office at the Carlsbad Police Department. Officer Flores responded and I read to him and had him read the *Notice of Paid Administrative Leave and Related Orders* (attached). Officer Flores stated that he understood the orders and signed and dated the memo. I provided him with a copy of the memo.

METHODOLOGY

Interviews of the involved personnel and listed witnesses were conducted in person in my office and digitally recorded. The recordings were saved to computer and transferred to disc.

The following items were collected and reviewed as part of this investigation:

Item 1: *Supervisor's Complaint Summary*

Item 2: Email dated Wednesday, May 02, 2012 7:23 AM sent from Jesse Flores to Chris Boyd, Mickey Williams, Matt Magro and Bryan Hargett

Item 3: Email attachment containing report titled *CI contact report 11-1853*

Item 4: Supplemental narrative completed by Sgt. Greg Koran

SUMMARY OF ALLEGATIONS – OFFICER

Sgt. Boyd alleges that Officer Flores provided misinformation and was untruthful to a supervisor(s). If true, this is a violation of the following Carlsbad Police Department Policies:

Officer Flores

Allegation 1

Policy 340 § 340.3.5 (i) - PERFORMANCE

*The falsification of any work-related records, the **making of misleading** entries or **statements with the intent to deceive**, or the willful and unauthorized destruction and/or mutilation of any department record, book, paper or document.*

Allegation 2

Policy 340 § 340.3.5 (ad) - PERFORMANCE

Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

Based on the investigation, it is also alleged that Officer Flores was delinquent in providing information regarding the possible whereabouts of a wanted homicide suspect to department investigators. If true, this is a violation of the following Carlsbad Police Department Policy:

Allegation 3

Policy 340 § 340.3.5 (c) - PERFORMANCE

Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without a reasonable and bona fide excuse.

EVIDENCE AS TO THE ALLEGATIONS

Interview of Sergeant Mickey Williams (Witness)

On 05/07/2012, at approximately 1416 hours, I interviewed Sgt. Williams. The interview was conducted in my office. No one else was present during the interview. The interview was digitally recorded. Sgt. Williams told me essentially the following:

1 Sgt. Williams stated that on 04/27/2012 at about 0900 hours he had a meeting with Detective
2 Bryan Hargett, DA investigator Christie and US Deputy Marshal Jose Olivares. He said the
3 meeting was to discuss attempting to locate a homicide suspect by the name of Pedro "Petey"
4 Avelos, who had fled to Mexico.

5
6 Sgt. Williams said that when the meeting concluded he walked Deputy Marshal Olivares
7 downstairs and then returned to the meeting area in the detective bureau. When Sgt. Williams
8 arrived he overheard Officer Flores say to Detective Hargett and DAI Christie, "He's in Ensenada
9 with his Dad." Sgt. Williams asked Officer Flores to repeat what he had said and Officer Flores
10 stated that Petey was in Ensenada with his Dad. Sgt. Williams asked Officer Flores how he
11 knew this and Officer Flores responded, "An informant told me." Sgt. Williams then asked him
12 when he spoke to the informant and Officer Flores responded, "Within the last 30 days."

13
14 Sgt. Williams then asked Officer Flores what he had learned from his informant and Officer
15 Flores stated that his informant was standing next to another gang member named Angel
16 Martinez. Martinez was talking on a Nextel phone and the informant heard information that
17 Petey was down in Ensenada with his Dad.

18
19 Sgt. Williams said that he told Officer Flores that this was useful information and that if he had
20 provided it sooner Sgt. Williams would have been able to try to track down the suspect in
21 Ensenada. According to Sgt. Williams, Officer Flores then stated that it wasn't his intention to
22 "slow you guys down." Sgt. Williams then asked Officer Flores if he had relayed this
23 information to anyone. Officer Flores stated that he relayed it to a US Deputy Marshal. Sgt.
24 Williams asked him what marshal and Officer Flores then opened his phone and appeared to be
25 searching for a name then stated that he couldn't remember his name and he must have
26 deleted the information. Sgt. Williams said that he then asked Officer Flores if he gave the
27 information to anyone but that marshal and Officer Flores responded, "No."

28
29 I asked Sgt. Williams if Officer Flores ever told him why he would contact someone from the
30 Marshal's Office and not someone from our own agency and Sgt. Williams said, "No." Sgt.
31 Williams said that he then told Officer Flores to try to identify the marshal that he provided the
32 information to. Sgt. Williams said that he was concerned that there would be two marshals
33 attempting to locate the same suspect but not aware that they were both conducting the same
34 investigation. Sgt. Williams said that Officer Flores then left.

35
36 Sgt. Williams said that Officer Flores returned to his office a few hours later and told him that
37 the US Deputy Marshal was named (Steve) Roncone. He also stated that he "might have told"
38 DAI Christie the information. Sgt. Williams said that he was familiar with Deputy Marshal
39 Roncone. After Flores left Sgt. Williams' office, Sgt. Williams said that he called Steve Roncone
40 and Roncone told him that not only had he not spoken to Officer Flores regarding this
41 investigation but that he had also not spoken to Officer Flores' partner, Steve Chaco who is also
42 a US Deputy Marshal.

1 Sgt. Williams said that he then called DAI Christie to determine if he had heard the information
2 from Officer Flores previously. DAI Christie told Sgt. Williams that the first time he had heard
3 the information was at the morning meeting attended by himself, Detective Hargett and Sgt.
4 Williams. DAI Christie also told Sgt. Williams that Officer Flores had called him just prior to Sgt.
5 Williams calling him. DAI Christie told Sgt. Williams that Officer Flores asked him "Didn't I tell
6 you that before?" and DAI Christie responded that he had never heard that information before.
7

8 Sgt. Williams said that later in the afternoon on April 27, there was a meeting with Lt. Matt
9 Magro in his office attended by himself, Officer Flores and Flores' supervisor Sgt. Chris Boyd. At
10 the meeting Officer Flores was asked why he didn't relate the information from the informant
11 to anyone from Carlsbad PD and Officer Flores responded, "It was just a brain fart."
12

13 Sgt. Williams then discussed the inability of Officer Flores to recall which US Marshal he had
14 provided the informant information to. Officer Flores then stated that it was Chaco (Officer
15 Flores' partner at GTF) that he had relayed the information to and Chaco told Roncone. Sgt.
16 Williams questioned how Officer Flores could have forgotten that he had given the information
17 to his own partner. Sgt. Williams said that when he initially asked Flores who he had told,
18 Flores opened his phone as if looking for a number or contact that he was unfamiliar with. Sgt.
19 Williams also stated that he had spoken to Roncone and Roncone stated that he never heard
20 the information from anyone. According to Sgt. Williams, Officer Flores then stated that he told
21 Chaco and Chaco said that he was going to tell Roncone.
22

23 During the meeting Sgt. Williams also asked Officer Flores if he wrote a report when he
24 debriefed the informant after hearing the information about the location of the homicide
25 suspect. Officer Flores then told him, "I'm sure I did. It's in the notes in the file." Sgt. Williams
26 then asked for a copy of the report or notes. Officer Flores responded that he couldn't provide
27 it because it belonged to GTF. Sgt. Williams said that he told Officer Flores to complete a CBPD
28 report based on the information in the informant file. Sgt. Boyd then suggested that Officer
29 Flores obtain a copy of the information in the informant file and redact any specific information
30 referring to the informant. Officer Flores said he would complete a report.
31

32 Sgt. Williams then asked Officer Flores when he would have the report completed. Officer
33 Flores said that he couldn't turn the report in until Thursday (the meeting was on a Friday).
34 Officer Flores said that he had court during the first part of the week and that the informant
35 files were under lock and key at GTF and could only be accessed by supervisors. The meeting
36 then ended.
37

38 Sgt. Williams said that he went home over the weekend and was thinking about the issue. He
39 said that it concerned him that multiple US Marshals would be working on this case and it could
40 make CBPD look bad. He said he contacted Sgt. Boyd during the weekend and told him that he
41 needed the report sooner. Sgt. Boyd told him that he would talk to Officer Flores and try to get
42 the report sooner.
43

1 Sgt. Williams said that he received an email and an attachment (*see attached*) from Officer
2 Flores on May 2, 2012. Sgt. Williams said that he immediately noticed a discrepancy with what
3 Officer Flores had told him earlier. Sgt. Williams said that the report detailed the information
4 being heard by the informant "on or about March 7". Previously, Officer Flores told Sgt.
5 Williams that this had occurred within the past 30 days but the date on the report was nearly
6 two months ago. Sgt. Williams said that after reading the report he was unsure of the accuracy
7 of it. After initially being told by Officer Flores that he had written a report after receiving the
8 information, and now the date in the report was ambiguous, Sgt. Williams said that he felt that
9 Officer Flores was being untruthful about originally writing a report. He said that he did not
10 want investigators relying on a faulty incident report to obtain a search warrant for phone
11 records. Sgt. Williams said that the most basic, but important information was missing from the
12 report. He said that the date and time the phone call took place that the informant overheard
13 was not in the report. He said that information would be essential to tracking down the phone
14 call to Mexico to locate the suspect. Sgt. Williams asked Sgt. Boyd to confirm with GTF the
15 accuracy of the information in the report.

16
17 Sgt. Williams said that he talked to Sgt. Boyd after he returned from GTF. Sgt. Boyd told him
18 that there was no more information to be obtained because there wasn't a file at GTF for that
19 informant. I asked Sgt. Williams if the indication he got from Officer Flores during the previous
20 meeting was that the informant he referred to was a "formal, signed-up, working informant".
21 Sgt. Williams said that Officer Flores stated "specifically" that he was. Sgt. Williams stated that
22 Officer Flores told him that the reason he couldn't complete the report was because he needed
23 access to the informants file that could only be accessed by GTF supervisors.

24
25 I asked Sgt. Williams for his theory on why Officer Flores would be untruthful regarding any of
26 the information he provided or reports that he completed. He stated that in his opinion it was
27 because he walked up on a conversation that Officer Flores did not expect him to walk up on.
28 When Officer Flores was speaking to Detective Hargett and DAI Christie, Sgt. Williams
29 overheard the information regarding the homicide suspect and pressed Officer Flores for more
30 detail. Sgt. Williams believed that Officer Flores knew that not providing that information in a
31 timely manner and not initially completing a report showed poor work performance. Sgt.
32 Williams felt that Officer Flores was unprepared to answer questions regarding specific details
33 of the information provided by the informant. Therefore, when he was questioned he began to
34 say things that weren't true. Sgt. Williams questioned how a detective (Officer Flores) could
35 have information regarding a homicide suspect and not follow-up on that information.

36
37
38 ***Interview of Sergeant Chris Boyd (witness)***

39
40 On May 8, 2012 at approximately 1106 hours, I interviewed Sergeant Chris Boyd. The interview
41 was conducted in my office. No one else was present during the interview. The interview was
42 digitally recorded. Sgt. Boyd told me essentially the following:

1 Sgt. Boyd said that he was contacted on April 27, 2012 by Officer Flores in the Vice-Narcotics
2 Office. Sgt. Boyd stated that Officer Flores told him that he had a conversation with Sgt.
3 Williams regarding information that he had received from an informant and that it was "going
4 to be a problem" because he (Flores) had not forwarded that information in a timely manner.
5

6 Officer Flores then told him that the information concerned the whereabouts of a Carlsbad PD
7 homicide suspect who was in Ensenada. Officer Flores characterized this lapse as a "brain fart"
8 to Sgt. Boyd. Sgt. Boyd said that Officer Flores told him that the manner in which Sgt. Williams
9 reacted when hearing the late information made him (Flores) realize that this was going to be a
10 "problem". Sgt. Boyd also stated that Officer Flores told him that he had relayed the
11 information from the informant to someone at GTF. Sgt. Boyd stated that he did not recall a
12 name but does remember Officer Flores saying that it was a US Marshal.
13

14 Sgt. Boyd said that later that same day Sgt. Williams approached him and discussed Officer
15 Flores not passing on the information about the homicide suspect in a timely manner. Sgt.
16 Boyd said that he discussed the issue with Lt. Magro and they decided to have a meeting to
17 resolve the issue.
18

19 Later in the afternoon Sgt. Boyd, Sgt. Williams, Lt. Magro and Officer Flores met in Lt. Magro's
20 office. I asked Sgt. Boyd if Officer Flores offered any excuse for failing to pass on the
21 information and Sgt. Boyd stated that Officer Flores said it was inadvertent or unintentional and
22 once again described it as a "brain fart". I asked Sgt. Boyd if Officer Flores mentioned during
23 the meeting who he passed the information on to. According to Sgt. Boyd, Officer Flores
24 identified two US Marshals, Roncone and Chaco.
25

26 I asked Sgt. Boyd if Officer Flores made it clear to him at the meeting that the informant being
27 discussed was an active, formal confidential informant working for GTF. Sgt. Boyd responded,
28 "Yes." Sgt. Boyd stated that Officer Flores had told him previously that the subject was a
29 confidential informant, that Officer Flores had provided him the name of the informant and
30 that the informant was previously an informant for Carlsbad PD's Vice-Narcotics Unit. Sgt. Boyd
31 also stated that Officer Flores had met with him in the past six to twelve weeks and specifically
32 asked for that subjects CI file. During that meeting Sgt. Boyd said that Officer Flores told him
33 that the informant was "signed-up" with GTF as an informant.
34

35 Sgt. Boyd stated that during the meeting on April 27th he asked Officer Flores if he had
36 documented his contact with the CI regarding the information on the homicide suspect. Officer
37 Flores told Sgt. Boyd that he had documented that contact in a CI contact report. Sgt. Boyd
38 asked Officer Flores if he could get a copy of that report. Officer Flores said that he didn't have
39 access to the report and it required access by a GTF supervisor. Sgt. Boyd then asked Officer
40 Flores if he could provide a redacted copy of the contact report removing any sensitive
41 information. Officer Flores said he could get the report but that the earliest he could provide it
42 would be the following Thursday due to court commitments.
43

1 Sgt. Boyd said that he received a text message from Officer Flores on May 1st telling him, "They
2 will have it 1st thing in the morning." Sgt. Boyd said that Officer Flores had drafted a document
3 based on his recollection of the events but that he was still unable to access the CI file due to
4 the unavailability of GTF supervisors. Sgt. Boyd said that Officer Flores told him that the report
5 may not be "100% accurate." Sgt. Boyd said that he encouraged Officer Flores to attempt to
6 gain access to the file because the original report would provide the highest level of detail and
7 accuracy.

8
9 Sgt. Boyd said that he had a conversation with Officer Flores prior to receiving the text message
10 where Officer Flores told him that he was attempting to have Sgt. Kearny meet him at GTF to
11 access the file. After receiving the text message, Sgt. Boyd believed that Officer Flores made
12 contact with Sgt. Kearny and that he was going to provide him access to the file and the report
13 would be written based on that.

14
15 Sgt. Boyd said that he received a written report and an email from Officer Flores on May 2nd. I
16 asked Sgt. Boyd about a specific sentence in the email that states, "The CI and other
17 information provided by the CI has been used in recent affidavits to begin the wire tap for our
18 upcoming case." I asked Sgt. Boyd if in his opinion someone would have to have been formally
19 signed-up as a confidential informant to use their information in an affidavit for a search
20 warrant. He stated, "if they are a CI, absolutely yes."

21
22 Sgt. Boyd stated that he then reviewed the attachment to the email which was a report (*see*
23 *attached*) written by Officer Flores and reviewed by Sgt. Kearny. Sgt. Boyd said he had concerns
24 with the report because it seemed "overly vague". Sgt. Boyd said he was also concerned that
25 Officer Flores had not actually documented the contact with the informant. Sgt. Boyd stated
26 that he was still under the belief that the informant was signed up with GTF as an informant but
27 that maybe Officer Flores had failed to document the contact. Sgt. Boyd said that Officer Flores
28 referred to the subject in the email as a confidential source, but based on his knowledge the
29 terms confidential informant and confidential source were interchangeable and Federal law
30 enforcement tended to use the term "source".

31
32 I then asked Sgt. Boyd if he had any conversations with the sergeants at GTF. He said that he
33 did and that he met Sgt. Kearny and Sgt. Miedecke at GTF on May 2nd in hopes of reviewing the
34 CI file to gain more information to assist the investigation into the homicide suspect. Sgt. Boyd
35 said that he learned from the GTF sergeants that the informant in question was not currently a
36 CI with GTF and never had been. Sgt. Boyd said that he was told that Officer Flores had
37 attempted to sign up the subject "a couple of months previously", had been assigned a CI
38 number but later was denied informant status due to the subject residing in Mexico.

39
40 I asked Sgt. Boyd if a subject is rejected as a CI, is there still documentation or reports retained
41 under that CI number. Sgt. Boyd said that it was his understanding during that conversation
42 that there never was any paper documentation of the CI that Officer Flores was attempting to
43 sign up and that the CI number was later re-assigned to another detective.

1 Sgt. Boyd stated that he also learned from Sgt. Miedecke that Officer Flores had attempted to
2 sign up the subject as a CI again on the morning of May 2nd, just a few hours prior to Sgt. Boyd's
3 meeting at GTF. This appeared to Sgt. Boyd as an "overt act" on Officer Flores' part to "cover
4 his tracks". Sgt. Boyd stated that Officer Flores had told himself, Sgt. Williams and Lt. Magro
5 that the subject was working as a confidential informant for GTF and that he had documented a
6 prior contact with the CI, when in fact neither of these statements was true.

7
8 Sgt. Boyd said he checked the CBPD confidential informant file for the subject to determine if
9 there were any entries by Officer Flores. Sgt. Boyd stated that the only entry was a notation by
10 Officer Flores on January 26th that the informant was going to be handled by him at GTF. I
11 confirmed that there were no contact reports or case initiations where the informant was used
12 and Sgt. Boyd said, "None whatsoever."

13
14 I asked Sgt. Boyd if he had any other information that he felt would be beneficial to this
15 investigation. He stated that based on Officer Flores' experience level and his three years of
16 experience working with informants at the Gang Task Force that his statement regarding the
17 subject being a confidential informant was not a mistake but an "outright lie". Sgt. Boyd said
18 that it also calls into question whether the original conversation between the subject and
19 Officer Flores concerning the location of the homicide suspect actually ever took place.

20
21
22 ***Interview of Lieutenant Matt Magro (witness)***

23
24 On May 7, 2012 at approximately 0940 hours, I interviewed Lt. Matt Magro. The interview was
25 conducted in my office. No one else was present during the interview. The interview was
26 digitally recorded. Lt. Magro told me essentially the following:

27
28 Lt. Magro said he was approached by Sgt. Boyd about needing a meeting with Sgt. Williams and
29 Officer Flores regarding information that Officer Flores had provided from a CI concerning the
30 location of a homicide suspect in Mexico and how the information was not relayed in a timely
31 manner.

32
33 Lt. Magro said he met with Sgt. Boyd and Sgt. Williams prior to Officer Flores being present. Lt.
34 Magro said Sgt. Williams relayed the conversation he had with Officer Flores about the
35 information from the informant and how Officer Flores had shared the information with a US
36 Marshal. Lt. Magro recounted the information about how Sgt. Williams attempted to track
37 down the Marshal (Roncone) who heard the information, but verified that he had not been told
38 anything. Lt. Magro also stated that Sgt. Williams told him that once he told Officer Flores it
39 was not Roncone, Officer Flores stated that it was his partner Chaco.

40
41 Lt. Magro said that they then had a meeting with Officer Flores. He said he talked to Officer
42 Flores about the confusion of which US Marshal he relayed the information to and how he
43 couldn't remember that the person he told was his own partner. Lt. Magro said that there was
44 a back and forth regarding that issue but that nothing was ever clarified. Lt. Magro said that

1 Officer Flores only said he had a "brain fart" about not forwarding the information in a timely
2 manner to anyone from COV.

3
4 Lt. Magro said that Sgt. Boyd asked Officer Flores if he completed a written report documenting
5 the contact. Lt. Magro said that Officer Flores responded, "I'm sure I did." Lt. Magro said that
6 Officer Flores was asked for a copy of the report and Officer Flores said he couldn't provide one
7 because it's GTF policy. Officer Flores then told Lt. Magro that he could write a stand-alone
8 report. Lt. Magro said they tried to explain to Officer Flores that they needed the information
9 from the report to write an affidavit for a search warrant to get phone records. According to Lt.
10 Magro, Officer Flores again stated that he would write a stand-alone report. Lt. Magro said that
11 when they discussed when the report would be completed, Officer Flores explained how he
12 needed a GTF sergeant to allow him access to the CI files. Lt. Magro said that he later received
13 the email from Officer Flores with the attached reports. He said he also had concerns about the
14 vagueness of dates and details.

15
16 Lt. Magro said he then had a conversation with Sgt. Boyd about going over to GTF to attempt to
17 review the CI file themselves. Lt. Magro determined that Sgt. Boyd should go on his own. Sgt.
18 Boyd later relates to Lt. Magro that he went to GTF and there is no informant file. Lt. Magro
19 said he confirmed with Sgt. Boyd that he asked about the same subject they had been
20 discussing all along and Sgt. Boyd confirms he had. Lt. Magro said that the name of the
21 informant was discussed early on in their conversations and that Officer Flores himself had
22 identified the informant by name.

23
24 Lt. Magro also stated Officer Flores sent an email (previously discussed in Sgt. Boyd's interview)
25 saying that the CI was being used in affidavits for wiretaps when he (Flores) knew that the
26 subject is in fact not an informant. Lt. Magro stated that the way Officer Flores conveyed the
27 information to them (himself, Sgt. Boyd and Sgt. Williams) led them to believe that the subject
28 was a formal confidential informant working for GTF. Lt. Magro said that his belief was based in
29 part on Officer Flores' contention that he had documented a contact with the CI and that this
30 information was in a file accessible only by a GTF supervisor.

31
32
33 ***Interview of Sergeant Mike Kearny (Escondido PD/North County Gang Task Force)***

34
35 On May 9, 2012 at approximately 0913 hours, I interviewed Sgt. Mike Kearny. The interview
36 was conducted in my office. No one else was present during the interview. The interview was
37 digitally recorded. Sgt. Kearny told me essentially the following:

38
39 Sgt. Kearny said that he received a text message from Officer Flores on Monday, April 30th
40 asking for access to the CI file. Sgt. Kearny responded that he was on his day off but if he
41 absolutely needed access he could meet him at GTF. Sgt. Kearny said that Officer Flores then
42 called him and explained that he needed notes from a CI file to refresh his memory to complete
43 a report. Sgt. Kearny said he told Officer Flores that if his department was asking for it he

1 would be more than happy to come in and meet Officer Flores. Sgt. Kearny said that Officer
2 Flores told him not to worry about it and "we'll just do it later."

3
4 I asked Sgt. Kearny if Officer Flores asked him the following day to access the CI file and Sgt.
5 Kearny replied, "Actually he didn't". Sgt. Kearny said that Officer Flores emailed him a report
6 and asked him to review and approve it. Sgt. Kearny said that he was busy that day having just
7 returned from vacation and that he didn't get a chance to review it. Sgt. Kearny said he went
8 home and received either a text or email from Officer Flores asking him if he had an
9 opportunity to review the report. He said he didn't but if he emailed it to him he would look at
10 it. Sgt. Kearny said he checked his email and the report was there.

11
12 He said as he was reviewing the report he recalled that Officer Flores had repeatedly told him
13 during their phone conversation that the report was based on "the best of his recollection" and
14 that it had occurred some time ago. Sgt. Kearny said he felt this was odd that he kept stressing
15 that point and questioned, "Why wouldn't you write a report that was based on the best of
16 your recollection?" Sgt. Kearny also felt it was odd that the report was so short and very
17 generic. He said that he had Officer Flores correct some minor grammar and punctuation
18 issues then approved the report and sent it back.

19
20 I asked Sgt. Kearny if he knew if Officer Flores ever accessed the CI file prior to completing the
21 report he reviewed. Sgt. Kearny said that he never gave Officer Flores access and that in his
22 conversations with the other GTF Sergeant Scott Miedecke, he didn't access the file for Officer
23 Flores either.

24
25 I asked Sgt. Kearny what his perception of a confidential source is and he said the term can be
26 interchangeable with confidential informant but that he felt that someone referring to a source
27 is referring to something less than a formal informant.

28
29 I asked Sgt. Kearny about the email sent by Officer Flores to CBPD supervisors referring to the
30 current use of the CI in affidavits for wiretaps. I specifically asked him if it was the practice or
31 policy of the GTF to use informant information for affidavits if the subject wasn't a formal CI.
32 Sgt. Kearny responded, "Not that I know of." and that he was basing his answer on his tenure at
33 GTF that was in excess of one year. He stated that it didn't appear to him that would be their
34 policy to use an informant that had not been approved by GTF supervision and officially signed-
35 up.

36
37 I asked Sgt. Kearny if he was aware of any ongoing cases where the subject was currently being
38 used and Sgt. Kearny responded, "Not that I know of." I referred to the subject by name and
39 Sgt. Kearny said that he had never heard the subjects name before. Sgt. Kearny said that he
40 believes the person exists but that I would need to speak to Scott (Miedecke) because Officer
41 Flores had conversations with him a few months ago about this subject.

42
43 Sgt. Kearny stated that he had a conversation with Sgt. Miedecke on April 30th and was
44 informed by Sgt. Miedecke that there was no informant file. According to Sgt. Kearny, Sgt.

1 Miedecke stated he was confused why Officer Flores would want either of them to come in on
2 their day off to review an informant file when Officer Flores knew there wasn't an informant
3 file.

4
5 Sgt. Kearny stated that he recalled Sgt. Boyd coming over to GTF on May 2nd to speak to him
6 and Sgt. Miedecke. Sgt. Boyd asked to see the informant file and specifically the CI contact
7 report and Sgt. Kearny told him there wasn't one.

8
9 I asked Sgt. Kearny if any information pertaining to a subject is retained if the subject is rejected
10 as a confidential informant and he stated, "Not from us." Sgt. Kearny said he believes that
11 Officer Flores knew the subject wasn't a confidential informant because just prior to the
12 meeting with Sgt. Boyd, Officer Flores attempted to sign the subject up as an informant again.
13 Sgt. Kearny said that Sgt. Miedecke told Officer Flores again that the subject could not be
14 signed-up because he was deported to Mexico and is still down there.

15
16 Sgt. Kearny said that he believes that a conversation did take place between Officer Flores and
17 the subject and the subject provided information, "but whatever else happened after that, I'm
18 not really sure."

19
20
21 ***Interview of Sergeant Scott Miedecke (SDSO/North County Gang Task Force)***

22
23 On May 9, 2012 at approximately 1303 hours, I interviewed Sgt. Scott Miedecke. The interview
24 was conducted in my office. No one else was present during the interview. The interview was
25 digitally recorded. Sgt. Miedecke told me essentially the following:

26
27 Sgt. Miedecke stated that he was contacted by Officer Flores on May 1st about accessing the CI
28 files. Sgt. Miedecke told him that he was off that day but the lieutenant at GTF was available to
29 allow him access. Sgt. Miedecke stated that he does not know if Officer Flores was able to
30 obtain the file on that day.

31
32 I asked Sgt. Miedecke if he had seen the report written by Officer Flores. He said he had not. I
33 asked him if in his opinion there was any difference between a confidential informant and the
34 term confidential source as used in the report. Sgt. Miedecke stated that the term "source" is
35 what the "Feds" use to refer to a confidential informant, but that the terms were
36 interchangeable. Sgt. Miedecke stated that "generally" he would believe that the term referred
37 to someone who was working as an active, signed-up informant but he stated it could refer to
38 another source of information as well.

39
40 I asked Sgt. Miedecke to his knowledge, was Officer Flores able to obtain a CI file on the subject
41 that had information related to a Carlsbad PD homicide suspect? Sgt. Miedecke stated, "No,
42 because there was no file." I asked Sgt. Miedecke if he believed that Officer Flores was aware
43 at the time that he asked for the file, that a file did not exist. Sgt. Miedecke responded, "Yes."

1 Sgt. Miedecke stated that sometime in February, Officer Flores asked him for a CI number. Sgt.
2 Miedecke said that he assigned a number to Officer Flores and Officer Flores gave him a verbal
3 summary of the information the subject was providing and how the subject could be used by
4 GTF. Sgt. Miedecke told Officer Flores to put a packet together and that he would review the
5 subject's information for acceptance as a confidential informant. Sgt. Miedecke said that
6 approximately two weeks later Officer Flores approached him and relayed that the subject had
7 been deported to Mexico. Sgt. Miedecke said that no documentation had ever been submitted
8 to him for approval.

10 According to Sgt. Miedecke, Officer Flores asked him what he should do about the subject. Sgt.
11 Miedecke asked Officer Flores if the subject had done any work for GTF and Officer Flores
12 responded, "No." Sgt. Miedecke then stated he told Officer Flores to "kill it", meaning they
13 were not going to be working with the subject as a confidential informant. I asked Sgt.
14 Miedecke if any documentation referring to the subject would be retained under that CI
15 number and he said that it was not retained and that the number was re-issued to another
16 investigator.

18 Sgt. Miedecke said that he recalled meeting with Sgt. Boyd on May 2nd. I asked what the nature
19 of their conversation was and Sgt. Miedecke stated that Sgt. Boyd asked to review the CI file,
20 specifically a contact report completed by Officer Flores. Sgt. Miedecke told him then that
21 there was not a CI file for that subject. Sgt. Miedecke said that he recalled Sgt. Boyd telling him
22 that the information they received from Officer Flores was that the subject in question was an
23 active CI currently working for GTF.

25 I asked Sgt. Miedecke if Officer Flores attempted to sign-up the same subject prior to his
26 meeting with Sgt. Boyd. Sgt. Miedecke said that he believed it was the day before his meeting
27 with Sgt. Boyd but, Officer Flores did ask to sign up the subject again. Sgt. Miedecke asked
28 Officer Flores if the subject was still in Mexico and Officer Flores told him he was. Sgt.
29 Miedecke said that he told Officer Flores "No", because the subject could not be supervised
30 while residing in a foreign country.

32 I asked Sgt. Miedecke if he was aware of any affidavits that were completed using information
33 from Officer Flores' subject. He said he wasn't aware of any but that he didn't know all of the
34 affidavits that had been prepared. He said that the information may have been used in
35 affidavits for pen registers. I asked him if information would ever be used in an affidavit from a
36 subject who was not a signed-up informant and he said, "No, not generally, no. Signed-up in
37 some shape or form either through us or on the Fed side." I confirmed with Sgt. Miedecke that
38 the subject would have to be signed-up in some way to use the subject for a wiretap and he
39 responded, "Yes."

41 I asked Sgt. Miedecke if he was aware of Officer Flores ever passing on information to US
42 Marshal Steve Chaco regarding the information concerning the wanted homicide suspect. Sgt.
43 Miedecke said that he became aware of the information after Sgt. Boyd told him that Officer
44 Flores had told Chaco. I asked if anybody at GTF had spoken to Chaco about the homicide

1 suspect information and Sgt. Miedecke stated that he was aware that the supervising US
2 Marshal at GTF, Ray Gellatly had spoken to Chaco about the entire issue surrounding the
3 subject Officer Flores wanted to bring on as a CI.

4
5 Sgt. Miedecke stated that when Officer Flores had come to him on May 1st attempting to sign
6 the subject up for the second time, he asked if he could have the US Marshals do a one-time
7 payment to the subject. Sgt. Miedecke asked Officer Flores how he was going to coordinate
8 having the subject sign the required paperwork and he said Officer Flores responded, "You
9 mean sign it again?" Sgt. Miedecke said that Officer Flores then made a statement about
10 shredding the subject's previous documentation when he was rejected as a CI. According to
11 Sgt. Miedecke, Officer Flores said that he would meet the subject at the border and provide him
12 a payment for the information he provided regarding the homicide suspect.

13
14 Sgt. Miedecke then said that he had a conversation with Supervising Marshal Gellatly where
15 Gellatly told him that he had spoken to Chaco. Gellatly stated that Chaco knew Flores had a CI
16 who was in Mexico but that he never met the CI and didn't have any other information
17 concerning the CI. Sgt. Miedecke said that he asked Gellatly if he asked Chaco specifically if
18 Flores gave Chaco information regarding a homicide suspect and Gellatly said that he did not
19 ask Chaco that.

20
21 Sgt. Miedecke also stated that Supervising Marshal Gellatly contacted the Mexico Liaison
22 Division of the US Marshals office and that he was told that they had received no new
23 information from anyone at GTF regarding the whereabouts of the wanted homicide suspect
24 and they had been getting all of their information from the investigators at Carlsbad PD and
25 nowhere else.

26 27 ***Interview of Officer Jesse Flores (Subject Officer)***

28
29 On May 31, 2012 at 1427 hours I interviewed Officer Flores at the Human Resource's
30 Conference room located at 1635 Faraday Avenue. Also present during the interview was Lt.
31 Paul Mendes and Officer Flores' attorney Michael Williamson. Officer Flores was provided with
32 a Lybarger Admonishment. The interview was digitally recorded by both me and Mr.
33 Williamson. The interview was transcribed by CBPD administrative secretary Paula Melikian
34 and edited by me. See attached.

35 36 37 **CONCLUSION**

38
39
40 During my interview with Officer Flores he made several admissions about "misleading" both
41 supervisors of the Carlsbad Police Department and a supervisor assigned to the North County
42 Gang Task Force. He also admitted that he did not inform investigators in a timely manner
43 regarding the whereabouts of a wanted homicide suspect. The following information was
44 concluded from my interviews with the involved personnel.

- 1 • Officer Flores stated during his interview that he received the information concerning
2 the location of the homicide suspect during the first week of March, 2012. Sgt. Williams
3 and Detective Hargett were told this information by Officer Flores on April 27, 2012.
4 Nearly eight weeks had passed before CBPD investigators were relayed the information.
5

6 Officer Flores, during a meeting with Sgt. Williams, Sgt. Boyd and Lt. Magro, described
7 his failure to pass on the information as a “brain fart”.
8

9 Officer Flores was asked during my interview with him how difficult it would have been
10 to make a phone call to COV investigators and he stated, “It wouldn’t have been
11 difficult” (*transcript page 9, line 1*). He then made several statements about the time
12 intensiveness of a case that he had been working on at GTF as one reason why the
13 information wasn’t relayed in a timely manner.
14

15 The information was limited in scope and length and could have been easily passed on
16 by Officer Flores by text message, voicemail, phone call, written report or in person
17 while at the CBPD.
18

- 19 • Sgt. Williams stated during his interview that he asked Officer Flores who he provided
20 the information to and Officer Flores responded that he provided it to a US Marshal.
21 Sgt. Williams asked him which marshal and Officer Flores searched his phone for a name
22 but stated that he must have deleted the information. Sgt. Williams said that he then
23 told Officer Flores to try to identify the marshal. Sgt. Williams said that Officer Flores
24 came to his office a few hours later and told him that the marshal was Steve Roncone.
25

26 Sgt. Williams calls Steve Roncone and confirms that he has never spoken to Officer
27 Flores. Sgt. Williams states that he confronts Officer Flores that the US Marshal is not
28 Roncone. According to Sgt. Williams, Officer Flores tells him the name is Steve Chaco,
29 his partner at GTF. Sgt. Williams states that he had several conversations with Officer
30 Flores throughout the day and this was the first time he heard the name Steve Chaco.
31 During my interview with Sgt. Williams he is incredulous that Officer Flores could have
32 forgotten that the person Officer Flores passed the information on to was his own
33 partner yet this was the first time his name had been mentioned.
34

35 When I questioned Officer Flores during his interview about who he had provided the
36 information to he initially stated Todd Lovelace (*transcript page 10, line 6*). The name
37 Todd Lovelace was never mentioned by Sgt. Williams, Sgt. Boyd or Lt. Magro during my
38 interviews with them. Later during the interview Officer Flores stated that he passed
39 the information to Steve Chaco and he would pass the information on to Steve Roncone.
40

41 I asked Officer Flores if he ever told Sgt. Williams that the person he passed the
42 information on to was Steve Roncone and Officer Flores stated, “No” (*transcript page*
43 *11, line 20*). Officer Flores stated that he told his partner Steve Chaco and that Chaco
44 told him that he would pass the information on to Steve Roncone. Officer Flores is

adamant that he told Sgt. Williams from the beginning of the conversations on this topic that he told him that the marshal was Steve Chaco. Officer Flores stated that he only gave the name Steve Roncone to Sgt. Williams as being the person that Steve Chaco would pass the information on to.

- During the afternoon meeting with Lt. Magro, Sgt. Williams and Sgt. Boyd, Officer Flores was asked by Sgt. Williams if he had completed a debrief report concerning the information he had learned about the homicide suspect. Sgt. Williams quoted Officer Flores as stating, "I'm sure I did. It's in the notes in the file."

This statement was corroborated by Sgt. Boyd in his *Supervisor's Complaint Summary* when he wrote that Officer Flores was asked about documenting the information in a CI contact report and Sgt. Boyd quoted Officer Flores as saying, "Yes, I'm sure I did."

During my interview with Lt. Magro he also confirmed the statement by Officer Flores and quoted him as saying, "I'm sure I did."

Lt. Magro, Sgt. Williams and Sgt. Boyd all confirmed that Officer Flores was asked if he had completed some type of written report documenting the information. All three of them also confirmed that Officer Flores answered affirmatively that he had completed a report.

When I asked Officer Flores if there was a file where the information from the informant was documented he responded, "No. There were probably some scratch papers and stuff, but that was about it. Those were always trashed" (*transcription page 27, Line 23*).

Officer Flores was then asked by Sgt. Williams to write a report based on the contact with the informant and the information in the informant file. Officer Flores completed a report (see attached). I asked Officer Flores if he wrote the report based solely on his recollection and he responded, "Yep" (*transcription page 27, line 19*). I then asked him if the dates, the conversation and who you spoke to is completely based on memory and he responded, "Ah, yeah" (*transcription page 27, line 22*).

- Initially when Officer Flores was directed by Sgt. Williams to complete a report based on the information in the informant file, Sgt. Williams stated that Officer Flores told him that he (Officer Flores) could not complete the report because the information was in a CI file that could only be accessed by GTF supervisors.

During my interview with Sgt. Boyd he also confirmed that Officer Flores told him that the file could only be accessed by a GTF supervisor.

During my interview with Lt. Magro, he stated that Officer Flores told him that he needed a GTF supervisor to provide him access to the file.

1 In my interview with Officer Flores I asked him about the existence of the CI file. Officer
2 Flores stated that the file does exist and it was with him (*transcription page 18, line 23*).
3 I also asked him if he told the supervisors present at the meeting that the file was locked
4 up at GTF and he stated, "That is what eventually came out, yes" (*transcription page 19,*
5 *line 26*).
6

7 Officer Flores also stated during the interview, "In that meeting there was, it wasn't
8 where I said that it was gonna be. The file wasn't in GTF locked up. I had it with me"
9 (*transcription page 48, line 3*).
10

- 11 • I asked Officer Flores if he contacted Sgt. Miedecke or Sgt. Kearny (GTF supervisors).
12 Officer Flores said that he contacted Sgt. Kearny. I asked Officer Flores if he asked him
13 for access to a CI file and Officer Flores responded, "Yes. I mislead him" (*transcription*
14 *page 22, line 25*). I asked him how he mislead Sgt. Kearny and Officer Flores stated,
15 "Because I had the file" (*transcription page 23, line 1*). Officer Flores said that he
16 "mislead" Sgt. Kearny because he wanted him at GTF to approve the report he was
17 going to write. Officer Flores said that he also did not want to expose a GTF informant.
18
- 19 • In my interviews with Lt. Magro, Sgt. Boyd and Sgt. Williams they each related that
20 Officer Flores represented the informant to be a signed-up, official informant working
21 for the Gang Task Force. All three officers are veteran investigators with lengthy
22 experience working with confidential informants. I asked Officer Flores if the subject
23 was ever signed-up as a confidential informant and he stated, "With GTF he was not"
24 (*transcription page 28, line 26*). I asked him who he was a confidential informant for
25 and Officer Flores responded, "Me" (*transcription page 28, line 28*).
26
- 27 • On May 2, 2012, Officer Flores sent an email to Sgt. Boyd, Sgt. Williams, Lt. Magro and
28 Det. Hargett (see attached). A portion of the email states, "The CI and other
29 information provided by the CI has been used in recent affidavits to begin the wiretap
30 for our upcoming case."
31

32 When I spoke with Sgt. Kearny and Sgt. Miedecke they both stated that "generally" the
33 subject would need to be an official CI in order to use them for an affidavit for a wiretap.
34 Sgt. Miedecke said that it was possible that information from the subject could be used
35 for an affidavit for pen registers. Neither sergeant had knowledge of the subject
36 actually being used and admitted that they did not know all of the affidavits that were
37 being prepared.
38

39 In my interview with Officer Flores, he stated that he gave information provided by the
40 subject to other agents in GTF and that information was used in affidavits for pen
41 registers.
42
43
44

- 1 • During Officer Flores' interview, Lt. Mendes asked him if he was ever, "embellishing
2 information to make yourself look like a shot caller?" During his response, Officer Flores
3 stated, "Did I intentionally try to mislead 'em? Absolutely not. I've been regretting it
4 the second it came out, and I, and I made a bad mistake for us" (*transcription page 47,*
5 *line 12*).

6
7 Lt. Mendes followed up by asking, "What have you been trying to regret? What bad
8 mistake did you make?" Officer Flores responded by saying, "The meeting with Sgt.
9 Williams and misleading him about the, the file, trying to buy myself some time"
10 (*transcription page 47, line 18*).

- 11
12 • I made a statement to Officer Flores during his interview where I said, "So you told them
13 that a document exists, that never existed. A file existed, that wasn't the confidential
14 informant file that only existed in your own possession." Officer Flores responded,
15 "Well I called it an informant file." I then said, "Is that, is that accurate?" Officer Flores
16 responded, "That was misleading, yes" (*transcription page 49, line 14*).

- 17
18 • I discussed with Officer Flores a conversation he had with Sgt. Koran while they were
19 both off-duty. Sgt. Koran wrote a supplement where he states that Officer Flores called
20 him and told him that he, "stepped on it". I asked Officer Flores what he meant when
21 he said he, "stepped on it". Officer Flores responded, "That I mislead Sgt. Williams and
22 them" (*transcription page 52, line 24*).

- 23
24 • Throughout my interview with Officer Flores he offered as his explanation for
25 "misleading" CBPD supervisors as his contentious relationship with Sergeant Williams
26 and the Crimes of Violence Unit and his desire to protect his "informant".
27
28
29
30
31

32 Submitted by: _____
33 Internal Affairs Sergeant _____ Date
34 Professional Standards and Services Division
35
36
37

38 Reviewed by: _____
39 Internal Affairs Lieutenant _____ Date
40 Professional Standards and Services Division
41
42
43
44

CONFIDENTIAL

CARLSBAD POLICE DEPARTMENT
INTERNAL AFFAIRS INVESTIGATION #12-17

INTRODUCTION

On May 2, 2012 at about 1723 hours, I received a text message from Officer Flores asking if I was clear for a phone call. I responded I was clear and Officer Flores called me shortly thereafter.

SUPPLEMENTAL NARRATIVE

Officer Flores told me essentially the following during our conversation. He began by asking me in general about who could act as a representative. I explained the role of a representative to him and some of the differences between getting a representative and getting a lawyer. He asked me who I would use as a representative if I thought I needed one. We discussed some names and he stated he had "stepped on it" and there was probably going to be a complaint against him. I told him not to tell me anything about the issue in case I was assigned to investigate. He did not tell me any specifics about the nature of the incident or who was involved.

Submitted by: _____
Internal Affairs Sergeant Greg Koran
Professional Standards and Services Division

_____ Date

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**CARLSBAD POLICE DEPARTMENT
INTERNAL AFFAIRS INVESTIGATION #12-17**

WITNESS LIST

| <u>Name</u> | <u>Telephone</u> |
|--|-----------------------|
| Officer Jesse Flores (Accused) Carlsbad Police Department | (760) 931-2100 (work) |
| Sergeant Mickey Williams (Witness) Carlsbad Police Department | (760) 931-2139 (work) |
| Sergeant Chris Boyd (Witness) Carlsbad Police Department | (760) 931-2195 (work) |
| Lieutenant Matt Magro (Witness) Carlsbad Police Department | (760) 931-2152 (work) |
| Sergeant Greg Koran (Witness) Carlsbad Police Department | (760) 931-2178 (work) |
| Sergeant Mike Kearny (Witness) Escondido Police Department North County Gang Task Force | (760) 644-1034 (work) |
| Sergeant Scott Miedecke (Witness) San Diego Sheriff's Department North County Gang Task Force | (760) 801-7426 (work) |
| Sergeant Jason Jackowski (Investigator) Carlsbad Police Department | (760) 931-2275 (work) |
| Lieutenant Paul Mendes (Investigator) Carlsbad Police Department | (760) 931-2260 (work) |

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CARLSBAD POLICE DEPARTMENT INTERNAL AFFAIRS INVESTIGATION #12-17

CHRONOLOGY

| | |
|------------------------|--|
| 05/03/2012, 1300 hours | Sgt. Jackowski received this complaint from Sgt. Koran. |
| 05/03/2012, 1400 hours | Sgt. Jackowski placed Officer Flores on paid administrative leave. |
| 05/07/2012, 0940 hours | Sgt. Jackowski interviewed Lt. Matt Magro. |
| 05/07/2012, 1416 hours | Sgt. Jackowski interviewed Sgt. Mickey Williams. |
| 05/08/2012, 1106 hours | Sgt. Jackowski interviewed Sgt. Chris Boyd. |
| 05/09/2012, 0900 hours | Sgt. Jackowski interviewed Sgt. Mike Kearny (GTF, Escondido PD). |
| 05/09/2012, 1300 hours | Sgt. Jackowski interviewed Sgt. Scott Miedecke (GTF, SDSO). |
| 05/31/2012, 1427 hours | Sgt. Jackowski/Lt. Mendes interviewed Officer Flores (w/counsel present) at the Human Resources Conference room at the Faraday facility. |
| 06/27/2012 | IA narrative completed and sent to Lt. Mendes for corrections and review. |

1 I.A. CASE NO.: 12-17

2
3
4
5
6 INTERVIEW OF:

7
8 Officer Jesse Flores with
9 Attorney Michael Williamson (representative)

10
11 ON:

12 May 31, 2012

13 1427 Hours

14
15 BY:

16 Sergeant Jason Jackowski and
17 Lieutenant Paul Mendes

18
19 AT:

20 Human Resources Conference Room

21 1635 Faraday Avenue

22 Carlsbad, CA 92008

23
24
25
26
27 TRANSCRIBED BY: Paula Melikian

Q1 Sergeant Jason Jackowski

Q2 Lieutenant Paul Mendes

A1 Officer Jesse Flores

A2 Attorney Michael Williamson

Q1 Pursuant to government code section thirty-three zero three (g), I'm recording this interview. Officer Flores you have a right to record the interview as well. Are you taking any medications that would cause you to be unable to understand and respond truthfully and fully to the questions that will be asked of you today?

A1 I am taking medication, but I don't think that's gonna effect my judgment.

Q1 Have you failed to take any prescription or other medication which would assist you to understand and respond truthfully and fully to the questions that will be asked of you?

A1 No.

Q1 Are you suffering from any physical or mental condition that would cause you to be unable to understand and respond truthfully and fully to the questions that will be asked of you?

A1 No.

Q1 The purpose of this interview is to discuss IA case number twelve dash seventeen. The allegations focus on, but are not limited to, Carlsbad Police Department policies section three forty point three point five (i)—falsification of any work-related records, the making of misleading entries or

1 statements with the intent to deceive, or the willful and
2 unauthorized destruction and/or mutilation of any department
3 record, book, paper or document. Section three forty point
4 three point five (ad)--giving false or misleading
5 statements, or misrepresenting or omitting material
6 information to a supervisor, or other person in a position
7 of authority, in connection with any investigation or in the
8 reporting of any department-related business. And policy
9 section three forty point three point five (c)--
10 unsatisfactory work performance including, but not limited
11 to, failure, incompetence, inefficiency or delay in
12 performing and/or carrying out proper orders, work
13 assignments or instructions of supervisors without a
14 reasonable and bona fide excuse.

15 The nature of this investigation is that you purportedly
16 were untruthful in providing information to Carlsbad Police
17 Department supervisors regarding the existence of the
18 confidential informant file and were untruthful in an e-mail
19 report to supervisors stating that the subject known to you
20 as an active informant in current gang task force cases.

21 It is also alleged that you violated department policy when
22 you failed to report information in a timely manner related
23 to the location of a wanted homicide suspect. This is your
24 Lybarger admonishment.

25 Today's questioning concerns administrative matters relating
26 to the official business of the Carlsbad Police Department.
27 I am not questioning you for the purpose of instituting a
28 criminal complaint against you. If, however, during the

1 course of this questioning you disclose information which
2 indicates that you may be guilty of criminal misconduct,
3 neither your self-incriminating statements nor the fruits of
4 any self-incriminating statements you make to me will be
5 used in any criminal legal proceedings.

6 Officer Flores, do you understand what I just read to you?

7 A1 Yes.

8 Q1 Do you have any questions regarding what I read?

9 A1 No.

10 Q1 On behalf of the Chief of Police, I now order you to
11 completely and truthfully answer my questions. Failure to
12 answer my questions will be deemed insubordination and will
13 subject you to discipline up to and including termination.

14 Do you understand?

15 A1 Yes.

16 Q1 Okay Jesse, can you tell me how long you've been a sworn
17 police officer?

18 A1 Um, just over seventeen years.

19 Q1 And how long were you assigned to the North County Gang Task
20 Force for?

21 A1 Um, three years counting this month...nine months...three years
22 nine months, just under.

23 Q1 Um, 'kay so I want to talk to you about a conversation, um,
24 you had with District Attorney Investigator Christie and
25 Detective Brian Hargett that occurred on April twenty-
26 seventh at about, ah, zero nine hundred in the morning. Do
27 you recall that conversation?

28 A1 Was it that early?

1 Q1 That time was given by Brian, spoke to you...

2 A1 I don't think it was that early, but I do remember having a
3 conversation (unintelligible) later afternoon.

4 Q1 Do you remember having a conversation where you approached,
5 um, Brian Hargett and D.A.I. Christie when they were in the,
6 the meeting area in the detective bureau?

7 A1 Yeah.

8 Q1 Um, what was the nature of that conversation?

9 A1 Um, well it started with me recognizing Scott Christie, and,
10 and I saw that they were just talking to Hargett, and, ah,
11 Sergeant Williams. And so, ah, I kinda just went over
12 there, ah, want to say hi and to, looked like they were just
13 finishing up, say hi and see, see what was goin' on. And,
14 ah, ah, they had told me they had just talked about the, ah,
15 Pen Registers case, and that's when I told them about the
16 information that I had.

17 Q1 And what information did you share with them?

18 A1 I gave 'em a little bit, ah, I told them basically I had, I
19 had learned that Petey was, ah, living in Ensenada, Mexico
20 with his dad who was supposedly on the run also.

21 Q1 So at any time in this conversation did, um, Sergeant
22 Williams approach you?

23 A1 Yeah.

24 Q1 And what did Sergeant Williams say to you?

25 A1 Ah, wh, they were, him and Hargett were both kinda talkin'
26 over each other. Ah, I was actually standing next to
27 Sergeant Williams. Ah, so ah, ah, they mentioned something
28 about, ah, in so many words, um, ah, not ah, the lack of

1 sharing, the lack of communications actually what it was.
2 Not sharing information, but a lack of communicating. And,
3 ah, then I, ah, about this information, and not when I heard
4 from, heard, heard the information, which was in, ah,
5 sometime in March. And then I, ah, my response to that was,
6 ah, that I, I just completely forgot. I didn't
7 deliberately, maliciously try to keep this information from,
8 from them. I mean, I, I helped them in every homicide case
9 they had, and had given them current information. I mean, I
10 understand. I mean, I truly tried to explain that to 'em,
11 that I, I, I just forgot. I mean, I was working a very
12 lengthy time intensive case at that time that I heard the
13 information. And then, I told them that I, that I passed it
14 on to the U. S. Marshal, who I believe was actively working
15 the case at the time. The information went to who was
16 actively working the case for PD; I just forgot to pass it
17 back on to my own department.

18 Q1 And what U. S. Marshal did you pass that information on to?

19 A1 I didn't pass it on to the U. S. Marshal. I passed it on to
20 my partner, Steve Chaco, who is a U. S. Marshal who's
21 assigned to the task force. And how this inf, how this came
22 about was, ah, a couple of weeks before, um, I had learned
23 of the information, ah, U. S. Marshal Todd Lovelace, ah,
24 recalled up to the, ah, gang task force, and talked to my
25 partner, Steve Chaco. Ah, and he tells Steve Chaco, "Hey,
26 they got this, they work warrants."

27 Q1 Right.

1 A1 And they do, ah, international, ah, extraditions. So ah,
2 Todd (and this is being told to me by Steve Chaco)—I, I
3 never talked to Todd—ah, and Todd says, "Hey, I got this
4 warrant from this guy named Pedro Avalos). You, ah, he's
5 from Carlsbad. Do you guys, can you guys help me with this?
6 And we're still in the middle of our, our RICO case that
7 we'd been working on. Ah, and ah, Chaco tells me the
8 information that Todd had, and I go, "If I can't touch that
9 case, if he gets approval through Carlsbad, come back in to
10 work their case, we can do that. But if he's workin' it,
11 you gotta get permission from them before I help 'em." And
12 that was it from there. So, I knew through Steve Chaco that
13 Todd Lovelace was actively working that warrant, because he
14 asked for the gang task force to help him. So, couple of
15 weeks later talking to my C. I. at the time down in Mexico,
16 and he ah, he tells me, "I had heard information from an
17 unreliable source, and I'm tryin' to make this, this other
18 source reliable." So I, so normally you take that
19 information and you corroborate that information with other
20 reliable sources of information to make them reliable. So I
21 had heard that he was down there. We had known from Hargett
22 and them that he went south, because they told us that, that
23 (unintelligible) gave him a ride down or someone from
24 (unintelligible) family gave him a ride to the border, so
25 it's common knowledge. So ah, I um, I, my CIs down there,
26 now you, and if my CIs in a vulnerable, ah, situation right
27 now. He was also one of, ah, people who gave up, ah,
28 pointed out the other suspect in this case...

Q1 Um-hum.

A1 ...to Hoppe. So he's, he's reliable, ah, thus far. So I told him what I had heard and he confirmed it. He was very reluctant to give this guy up because they're close family friends. But I have him over a barrel now, because he's stuck in Mexico. He's trying to be paroled back to me, there, I'm working with the U. S. Attorney's office, and ICE to bring him back and parole him to me. And this came through Lieutenant Magro. So ah, so I, I got him over the barrel, even though I've asked him before about, ah, Petey, he would never really say anything, other than he is down there.

Q1 Um-hum.

A1 Um, so and this time he gave me the information that, that I gave Sergeant Williams.

Q1 So at the time that this occurred, was, how long prior to when you eventually told Sergeant Williams and Detective Hargett this information?

A1 Ah, well, at the days, it would be, ah, I, I passed that on when I found out, got it on the first week of March, so do the math six, seven weeks?

Q1 Is there any reason, did, you knew that there was an active felony homicide warrant for Petey Avalos at the time?

A1 Um-hum.

Q1 He was wanted by our agency.

A1 I knew that.

Q1 How difficult would it have been to make a phone call over to the department to tell COV investigators?

1 A1 It wouldn't have been difficult. I-I-I just completely
2 forgot about it—didn't even really think about it. I had so
3 much work goin' on with the other case. I mean, we had
4 already been into that case for twenty months. With the
5 amount of work it took to do that case, we were still going
6 through interviews, evidence, still we're, we hadn't, I
7 think we'd just finished catching the last guy. I mean,
8 that case made San Diego County history with the amount of
9 work and people that were caught up into that. I mean, this
10 was a very time intensive. I mean, I was one of the co-case
11 agents, I mean, the, I was so busy with work at that time,
12 finishing up, getting stuff ready for the reverse sit down
13 to go to trial, to go through all the evidence that we had
14 recovered from fifty-five locations, prepping for the next
15 wire-tap that we all didn't want to have to do, trying to
16 develop a CI, trying to get the CI to come, get back in our
17 custody signed-up at GTF. I mean, it was, there, there was
18 just so much on my schedule at that time, it just completely
19 slipped my mind.

20 Q1 Okay. Let's go back to the, to the morning meeting when you
21 were there with, um, Scott Christie, Brian Hargett and
22 Sergeant Williams walked out, and you shared the information
23 with, with Detective Williams or the conversation, um, did
24 Sergeant Williams ask you if you had shared that information
25 with anybody else?

26 A1 Um, I don't remember him saying that.

27 Q1 Did he ask you if you had, he didn't ask if you had, you had
28 a conversation about not providing information to Carlsbad

1 PD, but you don't recall him making a statement that he, um,
2 he asked you if you had shared with anybody outside of the
3 department?

4 A1 I di, I-I-I don't, I don't remember anything like that. I
5 don't remember the exact words, but I, but I know I, I told
6 him that I passed the information off to Todd Lovelace. And
7 that might be the answer to that question that I shared it
8 with the U. S. Marshals who were working the case.

9 Q1 (unintelligible) when I spoke to Sergeant Williams, but he
10 told me that he asked you if you had shared with anybody,
11 you had said you had, you had shared it onto a marshal, you
12 didn't know who the marshal was...

13 A1 Right.

14 Q1 ...and that you had searched your phone for information that I
15 may have deleted it, is that correct?

16 A1 No.

17 Q1 That didn't happen?

18 A1 No. No.

19 Q1 You don't recall that conversation at all?

20 A1 No. The, it, I know what he's talking about, and it, it
21 didn't go down like that. First of all, what I was trying
22 to explain to him how the information, how I sent the
23 information to the U. S. Marshal, I could never get a
24 complete sentence out. He, Brian was interrupting, Sergeant
25 Williams was interrupting, it was more of like a, accusatory
26 more than an interrogation of, you know, of me, and I'm
27 trying to give them information. It's like, as it's been in
28 the past, every time I've ever helped them or given it's,

1 it's always accusatory and interrogate, and I'm giving them,
2 I'm helping them..

3 Q1 Um-hum.

4 A1 ...and I'm being turned into a-a-a-a suspect here. At that
5 time that's kinda how I was feeling. I was like, wait a
6 minute, I'm giving you information. Why are you treating me
7 like this? So, it didn't necessarily go down like that. I
8 told him, just like I told you, because I was getting
9 interrupted and I could never finish a sentence, so he was
10 only getting part of what I was trying to say, and then I
11 have to clean that up and go back to try to say what I real,
12 what I'm trying to say. So, to get a full sentence out
13 between the two of those guys, wasn't necessarily that easy.
14 And I, I, I, just like I tried to explain to you, I never
15 talked to any U. S. Marshal other than my partner.

16 Q1 Did you ever make any statements that after you searched
17 your phone you couldn't find any contact information. Um,
18 did you ever tell Sergeant Williams that, that the U. S.
19 Marshal you shared that information with was Steve Roncone?

20 A1 No.

21 Q1 You never, wait, wait, wait, you never told Sergeant
22 Williams that the U. S. Marshal that you provided that
23 information to was the U. S. Marshal Steve Roncone?

24 A1 Steve Roncone's name came up af, to see now we're talkin'
25 about a couple of conversations after the Scott Christie
26 thing. I had, I had called my partner and said, "Hey, who
27 did you talk to?" And he told me he had talked to Steve
28 Roncone. That's where that name had come up. See, there

1 were so many other little conversations between there and so
2 many accusations toward me, and I'm trying to give 'em, I, I
3 know he's tryin' to pin down the marshal. I'm tryin' to
4 help him pin down the marshal (unintelligible) have the
5 information, so that we can go forward with this. I'm
6 tryin' to help him, but...

7 Q1 So, so Sergeant Williams, after his conversation with you,
8 right after your conversation with you, he goes back to his
9 office and in his statement to me says that he calls up U.
10 S. Marshal Steve Roncone and asked him if he had heard any
11 information about the suspect either from you or from
12 anybody from gang task force. Why would Sergeant Williams,
13 if you never provided him with the name Steve Roncone, go
14 back and make that phone call?

15 A1 Because I, I told him. I just said that. I had talked to
16 my partner, my partner gave me this name, Steve Roncone. I
17 had never met Steve Roncone, never called him. Never. I,
18 I, everything I've done to the U. S. Marshals always been
19 through my partner Steve Chaco. That's why he's there.
20 That's why we're there. Everything that's filtered through
21 the agencies that are on the task force, I never talk to
22 'em. I ask Steve, "Hey, who did you give that information
23 to?" I told him (unintelligible), he even remembered
24 (unintelligible). I go, "Who did you give it to?" And, he
25 tells me he gave it to Steve Roncone. And then, even days
26 afterwards, he, he wasn't sure.

27 A2 Here's, here's the problem we are running into. You're
28 confusing him; you're confusing me. You start telling your,

1 your description of what's going on in answer to his
2 question, but you side track into four or five different
3 areas. His question was Steve Roncone.

4 A1 Uh-huh.

5 A2 You went to try and tell him that you obtained Steve
6 Roncone's name at some point during the other conversation.
7 You never came back and told him what the hell you did with
8 Steve Roncone's name. So he's wanting to know now how the
9 Sergeant would have Steve Roncone's name if you never told
10 the Sergeant. So, if you told the Sergeant, you better make
11 it clear when and how.

12 Q1 Immediately after your morning conversation, Sergeant
13 Williams goes back to his office and calls Steve Roncone,
14 based on the information you provided. He goes to Roncone
15 to insure that the U. S. Marshals are working the case. He
16 doesn't want to bifurcate it among, among the U. S. Marshal
17 service because they have multiple marshals out doing the
18 same exact thing but not aware that, that they're all
19 working on the same case at the same time. The only place
20 Sergeant Williams ever heard the name Steve Roncone was from
21 you. He's worked with him in the past on other cases, but
22 in related to this, it was at that time. Sergeant Williams
23 statement is clear; he's like, "I asked, I asked Officer
24 Flores if he'd provided that information to anybody else?
25 Flores opened his phone, appeared to be looking for names,
26 said "I must have deleted it," and then a couple of seconds
27 or minutes later said, "You know what, it was Steve
28 Roncone." So that's where Sergeant Williams got the

1 information was directly from you. Why, why would Sergeant
2 Williams make a phone call to Steve Roncone out of the blue?

3 A1 Okay. Okay. I clear, I understand what you're saying now,
4 and I understand your question. During, during this, this
5 morning meeting, there were more than one, two little pow-
6 wows with these guys. So, it got broken up to three, at
7 least three separate times. So, when I, I, I did call my
8 partner and asked. I, I, and I told, and I, I know what
9 Sergeant, um, Williams is talking about now. "Cause around
10 that time a U. S. Marshal did call me and leave me a voice
11 mail and I did go back into my phone to see if I had ever
12 deleted it. I mean that was weeks ago. So that, that, that
13 I do remember. I do remember looking into my phone, looking
14 to see going back into my history to see if I could find a
15 phone number for a U. S. Marshal around that time. That is,
16 that is true. When, when we had this conversation with him,
17 I, I, I called my partner. This is where he's getting the
18 name, 'cause I, I asked Steve, "Who did he talk with?" He
19 gave me the name Steve Roncone. The next time I talked to
20 Sergeant Williams, I said, "Chaco, my partner, relayed the
21 information to Steve Roncone." I had never talked to any
22 other U. S. Marshal. The guy who left me a voice mail
23 talking about it.

24 Q1 When Sergeant Williams talked to Roncone, Roncone said he
25 had never heard any information from anybody, including
26 Steve Chaco.

27 A1 I can't do anything about that Sarg.

1 Q1 Um, did you then have a subsequent to that, subsequent to
2 these meetings that were happening in the morning did you
3 hap-happen to have a chance of a one-on-one meeting with
4 Sergeant Chris Boyd? On April twenty-seventh.

5 A1 Yes.

6 Q1 You went into the vice narcotics office and spoke to him.

7 A1 Yes.

8 Q1 What was the nature of that conversation with him?

9 A1 This was right around, I'm not sure if it was, I think it
10 was before the, a, no it was after I finally had the last
11 conversation, I believe it was after the last conversation I
12 had with a, Sergeant Williams and Hargett in this, in their
13 office and it was becoming extremely hostile, and, and I
14 called the time out. Um, I told, I, Boyd came in the
15 office. My, my other partner from the ATF was in there with
16 me. I explained to Sergeant Boyd just like I told you.
17 Hey, this is, this is what happened, and walked up to Scott
18 Christie and them. They were talking about the case; I told
19 them what I had. A, Sergeant Boyd understood that my, the,
20 the work load I had at the time. I tried to explain to
21 them, I, I mean I, I just completely over looked it, forgot
22 it, never, never in, never did I try to keep it from go, not
23 give it to these guys. I understand the nature of the case.
24 So, I told 'em, even then, when I found the information
25 knowing that Todd Lovelace from the U. S. Marshal had
26 reached out to my partner, I gave it to the U. S. Marshal's
27 because I knew they were actively doin' it. Now I know,
28 just from working with them, I know that they, they can do

1 real time pings. So, I gave it to the person at that time
2 who was actually working the case. And I completely for,
3 just overlooked it.

4 Q1 Okay. Just specifically...

5 ? In that conversation, did um, did you tell Sergeant Boyd
6 that it, kind of the substance of your conversation was that
7 you, you needed to speak to Sergeant Boyd because this
8 information that you had given, felt like you didn't provide
9 the crimes of violence unit with was quote "going to be a
10 problem"?

11 A1 No.

12 ? (unintelligible)

13 A1 I said, a, I said this is gonna, they're gonna blow this way
14 out of proportion. Those are the words I used.

15 Q1 Would you say that failure to provide material information
16 about the whereabouts of a homicide suspect in a timely
17 manner would be blown out of proportion?

18 A1 I didn't even think of it like that. And I, it, it never
19 crossed my mind at that time.

20 Q1 Um...

21 A1 The reason I said that, Sergeant Jackowski, is because
22 everything I do for those guys, I can't think of one, one
23 thing in the last three and half years I did for those guys
24 that had never been taken out of context, questioned or
25 blown out of proportion.

26 Q1 Okay, let's, let's stick specifically to the events of April
27 twenty-seventh and the subsequent days after that, okay.
28 Anything outside of that I can't speak to.

1 A1 (unintelligible)

2 Q1 I don't have any understanding of your, your past
3 relationship with them, just specifically the facts
4 concerning this.

5 A1 I, I understand, but there's a background...

6 Q1 Okay.

7 A1 ...yeah (unintelligible)...

8 Q1 (unintelligible)

9 A1 ...helps me with my reasoning.

10 Q1 I understand. Um, did you then, later on in that day have
11 another meeting where you met with Sergeant Williams,
12 Sergeant Boyd and Lieutenant Magro in Lieutenant Magro's
13 office?

14 A1 Yes.

15 Q1 What was the nature of the conversation in that meeting?

16 A1 That, a, basically was, a, I initiated that conversation,
17 that meeting, just so you know, a, because of the hostile
18 environment that Mickey and Brian were, a, causing, and were
19 not going to get anything solved. So I initiated it, they
20 agreed to it, and we all went in there and met. Um, a,
21 basically it was to discuss, a, the information that I had
22 discovered and didn't pass on, um, and, um, I think that,
23 that was, that was, that was basically it.

24 Q1 During that meeting, um, were you asked by any supervisor in
25 the room whether there was, um, was you had documented that
26 information regarding the whereabouts of the homicide
27 suspect in a debrief report or some type of confidential
28

1 informant report that was on file at the gang task force?

2 Were you asked that question?

3 A1 Not like that, no.

4 Q1 How was it presented to you?

5 A1 Do you have that information? In so many words, it was
6 never that detailed and never that, a, that precise.

7 Q1 Did they ask you if it was in a confidential informant file?

8 A1 Nope.

9 Q1 Did they ask you if there was a confidential informant file?

10 A1 I told them there was.

11 Q1 So you told them that a confidential file existed...

12 A1 Yes.

13 Q1 ...for that subject?

14 A1 Yeah.

15 Q1 At the time that you answered that, were you aware...

16 A1 I didn't say it was confidential file, yeah I said it was a
17 CS file. Yeah, I did.

18 Q1 At the time that you stated that there was a confidential
19 informant file, were you aware that no confidential
20 informant file actually existed?

21 A1 The file does exist.

22 Q1 Where does it exist?

23 A1 I have it.

24 Q1 Okay. So, the, let's not get ahead we'll get to that part
25 in a second. Um, so during this conversation they asked you
26 if there was documentation, you say that "Yes, there is."
27 You say that file exists, they ask you, do they ask you at
28 any time to provide that file?

1 A1 Yeah.

2 Q1 And what did you say?

3 A1 I said, "Yeah." No, no, they, I said no you can't have the
4 file.

5 Q1 So then, what did they say to you.

6 A1 They did, they did, see, their, the word, they're not using,
7 they didn't ever ask for a file. They want, Sergeant
8 Williams wanted the report. They wanted the CI report.

9 Q1 That's what I asked you. I asked you if the term they had
10 used was, did he ask for a CI report or some type...

11 A1 Oh...

12 Q1 ...debrief or report...

13 A1 Oh...

14 Q1 ...that was maintained in a confidential informant file.

15 A1 Oh, I, I glossed over that. I'm sorry.

16 Q1 And you said it was at GTF. Did you tell them that you
17 didn't have access to the informant file or GTF?

18 A1 Yeah, the normal process is the files are locked up in the
19 Sergeant's office.

20 Q1 Hum. Did you explain that to them?

21 A1 Yes.

22 Q1 You told them that there was a confidential file that
23 existed and that it was locked up at GTF regarding this
24 subject that you were referring to? Provided the
25 information?

26 A1 That is what eventually came out, yes.

27 Q1 That is what you told them?

28 A1 Eventually, yes.

Q1 Okay. Um, did they ask you to complete a report based on the information that was in the confidential informant file?

A1 Yes.

Q1 And what did you tell them?

A1 I said, "Okay."

Q1 (unintelligible) is there any time during this meeting, did you tell them, um, going back to the issue with the U. S. Marshals, that you eventually determined that the, that the person you provided the information to was your own partner? Was Steve Chaco?

A1 I told them that from the beginning.

Q1 Because in my, in my interviews with them they didn't learn that until later on in the meeting. Then all of a sudden you're going to check your phone, you're provided the name Steve Roncone, but now, during this meeting, you suddenly realize that it was your partner, your own partner. Why would you have to check your phone or provide another name if you knew it was your own partner who you had been working with at GTF?

A1 Those are two separate issues. One is, I checked my phone because I did receive a call from a U. S. Marshal at that time regarding this. He left me a voice mail. I deleted that voice mail. But, I don't delete my messages. I'm, I'm horrible at that. So, I went back into my history to see if, if, if it hadn't fallen off by default. It wasn't there. The message was gone. I don't know what the guy's name was, so that was completely, a completely separate

1 incident with the U. S. Marshal. Every time I tried to tell
2 'em how the information was passed on, I was cut off.

3 Q1 Um-hum.

4 A1 I never got to finish any complete statement. It was always
5 accusatory. Always.

6 Q1 But my question is, if you knew it was your own partner, why
7 would you have to search your, your phone for your partner's
8 information or...

9 A1 No, I,...

10 Q1 ...find...

11 A1 ...I, I was...

12 Q1 ...the name...

13 A1 ...I wasn't...

14 Q1 ...Steve Roncone?

15 A1 ...I wasn't searching the phone for my partner's information.

16 Q1 Well corresponding statements from two people said that at
17 this meeting you finally provided the name of Chaco...

18 A1 Um, hum.

19 Q1 ...who is your own partner at GTF, where previously it was you
20 either didn't know or it was Steve Roncone.

21 A1 I, I told them about Steve Chaco before that in, in, in the
22 meeting when I went into the office, and said, "Hey,
23 (unintelligible) my partner passed it on." It, I, I told
24 them that. Prior to that, they might not have listened. It
25 wasn't the most calm tone...

26 Q1 Uh-huh.

27 A1 ...in there. They, I know, just from dealing with that,
28 they're only going to pick what they want to hear, like they

1 normally do with me and take it out of context. However, I
2 guarantee they didn't hear everything I've said. I know
3 they didn't hear everything I've said. So, it doesn't
4 surprise me they only wanted to share what they wanted to
5 hear. And every time I tried to explain to them, it was
6 never what they wanted to hear. That, that's what I was
7 dealing with this entire day. No matter how I was gonna
8 tell them, it wasn't gonna to be satisfactory.

9 Q1 Okay. Let's go, let's move on to the next issue. Um, so
10 after you're directed, who directed you to, to write a
11 report? To obtain a CI file and to write a report based on
12 that file?

13 A1 I'm not sure. I think it was Sergeant Williams. I'm not
14 sure.

15 Q1 So what did you do after this meeting?

16 A1 I don't know.

17 Q1 What did you do in pre, preparation to get, to access the
18 report? Did you contact anybody?

19 A1 I contact my partner again. And then I contact, I tried to
20 con, a, called the CI.

21 Q1 Did you contact Sergeant Miedecke or Sergeant Kearny?

22 A1 I, I called Sergeant Kearny. Yes.

23 Q1 And did you ask them for access to the confidential
24 informant file?

25 A1 Yes. I mislead him.

26 Q1 Mis, mislead who?

27 A1 Sergeant Kearny.

28 Q1 And how did you mislead Sergeant Kearny?

1 A1 Because I had the file.

2 Q1 So you knew you had the file, why did you contact Sergeant
3 Kearny to ask him for access to the file? That you knew
4 that, that he didn't have an, an, have possession of or
5 access to?

6 A1 I called Sergeant Kearny, when I did I did mislead him, but
7 I wanted him to be there at GTF, so when I wrote this report
8 that he would be the one to review it and sign it. I wanted
9 to keep everything that had to do with this in, this in,
10 this informant at GTF. I didn't want Carlsbad have any,
11 any, um, control over this file, because of past practices.
12 They were gonna expose, I believe they would expose the CI,
13 and pending the, the wire case that we were prepping for and
14 the information that I'd already used in other Pen Register
15 affidavits with this guy, I, I wasn't going to take the risk
16 of, of allowing Sergeant Williams and them to expose it, had
17 they done in other cases. Most recent cases that I've dealt
18 from within expose GTF informants.

19 Q1 So you lied to Sergeant Kearny?

20 A1 I mislead, I mislead Sergeant Kearny because I wanted him to
21 be there so he could sign, sign the, a, report.

22 Q1 Sergeant Kearny was texted and he said he had a conversation
23 with you...

24 A1 Right.

25 Q1 ...and I had a conversation with him where he advised me that
26 you said, "You needed access to a confidential informant
27 file." Is that a true statement—that you needed access to a
28 confidential informant file?

1 A1 That is a true statement.

2 Q1 You just said you didn't need access to a confidential
3 informant file 'cause you had it.

4 A1 That's the text message I sent. I, I was, I was stressin'
5 out, and I did turn in that file.

6 Q1 That's a lie then. That's not misleading. You're saying
7 that you needed access to a file that you knew either didn't
8 exist or you had possession of, either one. So that is not
9 misleading somebody. That was lying to them. Correct?

10 A2 Hang, hang on a second, Sarg. You know, it's your
11 interview, you can do your interview any way you want, but
12 what you can't do is violate any provision of thirty-three
13 hundred of the government code. The tone of your question,
14 questioning, the demeanor that you're displaying, and your
15 rapid fire questioning without him being allowed to provide
16 his statement is what is, generally referred to as abusive
17 treatment. That's not permitted. Please slow your tone
18 down. Slow questioning down and let him answer. Whether he
19 thinks it a lie or misleading or not is irrelevant because
20 ultimately the Chief of Police will decide whether it's
21 lying or misleading. You just don't like his answer; he
22 calls it misleading; you call it lying. The Chief will
23 determine whether he's a liar. But I would appreciate it if
24 you would not harangue my client. We don't need to have
25 that demeanor.

26 Q1 I, I don't agree that's harangue, but I'll change my tone of
27 questioning.

28 A2 Thank you.

1 A1 Thank you Sergeant.

2 Q1 Um, at any time did you contact Sergeant Miedecke and ask
3 him for access to the confidential informant file?

4 A1 No. Access to, no. We talked about files, but I didn't ask
5 him to access.

6 Q1 And what did you, what was your conversation with Sergeant
7 Miedecke about the file?

8 A1 That conversation with Sergeant Miedecke was, I told him
9 what I had. I had this same guy that he's been aware of. I
10 tried to sign him up once before, but he got deported. So I
11 didn't, so I, I returned the CI number. So I was goin'
12 through process of signing this guy up, and, at G.T.F. I
13 told Sergeant Miedecke what I had, and Sergeant Miedecke
14 said, "Well, we're not going to sign him up, but you can
15 keep a file on him." And so that's what I did. That's what
16 I continued to do.

17 Q1 Sergeant Miedecke told you that you could maintain a file on
18 him?

19 A1 Yes he did.

20 Q1 Um, so then did you complete a report?

21 A1 Yes I did.

22 Q1 That you provided, who'd you provide that report to?

23 A1 A, Sergeant Kearny for approval.

24 Q1 And what was that, that report based on?

25 A1 The information pertaining to their, a, their warrant
26 suspect.

27 Q1 And where did you obtain that information from?

28 A1 From the CI.

1 Q1 When you completed the report did you base your report on
2 another written record?

3 A1 I'm not sure I understand what you're sayin'.

4 Q1 Well, in the initial conversation when you were directed to
5 complete the report, you were asked to, um, write it based
6 on the information that you said that was maintained in a
7 confidential informant file. Correct?

8 A1 Now, now it wasn't, it wasn't, it wasn't worded like that.
9 They were never talking to me like that. It was never like
10 that, they were, they were, they wanted the report, they
11 didn't say it like you're saying it. They just wanted the
12 report.

13 Q1 So they had never said, base it on this or were you ever
14 asked to provide the original report and redact specific
15 information?

16 A1 Nope.

17 Q1 So, I told you I that had an interview with Sergeant Boyd
18 where he was asked to provide the information, provide the
19 report but redact it, Sergeant Boyd would be not telling the
20 truth.

21 A1 Uh...

22 Q1 And other people in that, that were present during that
23 meeting would not be telling the truth as well?

24 A1 I'd, that was a stressful meeting. I literally was sitting,
25 I had to take deep breaths.

26 Q1 A, that's not, that's not my question.

27 A1 I do not recall anything like that. I, I remember Sergeant
28 Williams saying, "Hey I want your report." I'm like, "You

1 can't have it. I, I'll give you what pertains to you, like
2 we normally do." I mean, you just don't give up your entire
3 um, file to, to people. You just, just don't do that. I
4 mean, common practice says you take what belongs to each
5 case and they get that piece. The rest doesn't pertain to
6 them, so you don't, you know, you don't get it.

7 Q1 Do you, you don't recall any supervisor at that time asking
8 to write the report based on the information that you
9 maintained in the confidential file? Did, did you recall
10 any conversation during that initial, during that meeting,
11 when Lieutenant Magro was present, that meeting, where they
12 said you should write a report based on what you said
13 existed in the confidential informant file?

14 A1 It wasn't worded like that.

15 Q1 And how was it worded?

16 A1 It was, it was, can you, can you write the report? Yeah.

17 Q1 So, when you completed that report, what was that report
18 based on? Just your recollection?

19 A1 Yep.

20 Q1 So, the dates, the conversation, who you spoke to is, is
21 completely based on memory?

22 A1 A, yeah.

23 Q1 Is there any file anywhere that exists where you documented
24 on paper the information provided you, from, to you from
25 that informant regarding the whereabouts of the homicide
26 suspect?

27 A1 No. There were probably some, some scratch papers and
28 stuff, but that was about it. Those were always trashed.

1 Q1 So, no file, no report exists where you actually documented
2 the conversation regarding the whereabouts of Petey Avalos
3 down in Ensenada.

4 A1 Nothing prior to that. No.

5 Q1 Um, so this email I'm going to read to you, tell me if you
6 recognize it, it says it's from you, Jesse Flores to
7 Sergeant Boyd, a, Sergeant Williams, Detective Hargrett,
8 Hargett, and Lieutenant Matt Magro, title "CI contact report
9 Eleven dash one eight five three." "To all: Here is the
10 report. All I ask is that if you use this in your affidavit
11 please seal this portion. The CI and other information
12 provided by the CI has been used in recent affidavits to
13 begin the wiretap for our upcoming case. Compromising the
14 CI will compromise our wiretap. Thanks for understanding.
15 As for the CDRs of Angel Martinez's phone, I'm still working
16 on that. Um, Jesse."

17
18 I had a conversation with Sergeant Miedecke and Sergeant
19 Kearny where they stated this subject was never signed up as
20 a CI and that you had been told that. You're aware of that
21 information?

22 A1 Well, I know he wasn't signed up, yeah. 'Cause it's up to
23 me to sign him up and then they approve it.

24 Q1 So, Sergeant Miedecke had told you that the, the subject was
25 never signed up as a confidential informant, correct?

26 A1 With GTF he was not.

27 Q1 Who was he a confidential informant for?

28 A1 Me.

Q2 Just for you?

A1 And I was working with ICE, ATF, and through the Marshal's office. And then recently, during that time, um, one of the ICE officials down at the border, a, was signing him up for information.

Q1 Um, when you told Sergeant Miedecke, did you ever have a conversation with Sergeant Miedecke where you told him that you were trying to sign this person up as a confidential informant through gang task force, but then he had been deported to Mexico?

A1 He had known that. We talked about that a couple of times. So, I'm not sure exactly, a, that answers your question.

Q1 Did you have a conversation with Sergeant Miedecke where you told him that the subject had been deported to Mexico?

A1 Yeah. He knew that.

Q1 And, when you told him that he'd been deported to Mexico, what did he tell you?

A1 I can't remember.

Q1 So if I had a conversation with him where he told me that he said, um, "subjects no longer to be eligible as a confidential informant, because he's now living in Mexico." That doesn't, that ring a bell with you? That sound familiar to that conversation?

A1 Not those words, no. What Sergeant Miedecke, the very last conversation that we had and he had made, I can't say the very last, but he, he had never said that I could not use that guy as an informant. What he had always said is him and the Lieutenant don't necessarily think it's a good idea

1 to have an informant in Mexico. This, the reason, I'm
2 assuming that they were allowing it is because he was the
3 only Carlsbad gangster that was givin' us information, and
4 we were currently going up, trying to go up on Carlsbad
5 line. And he was very close to the lines we're gonna tap.
6 So he was giving me current information at that time.

7 Q1 Do you know at, in your tenure at gang task force, is it the
8 policy, practice or custom of the gang task force to use
9 information from a, from a source other than the confo,
10 confidential informant for affidavits or for any type of
11 warrants?

12 A1 I (unintelligible), well you can have a source of
13 information.

14 Q1 Would you use their information in an affidavit for a
15 warrant?

16 A1 You could, yeah.

17 Q1 At, in this case, was this subject's information ever used
18 for any affidavits for any warrants?

19 A1 A, I gave that information, some of the information he had
20 given me, I had, yes, I had sent it over to Special Agent
21 Mike Kelly to put in the Pen Registers and the subpoena, a,
22 request for those call detail records, yes.

23 Q1 So, we went to gang task force and asked them the
24 information provided by this subject...

25 A1 Oh, you (unintelligible)...

26 Q1 ...(unintelligible) subject.

1 A1 ...warrants. They won't know it's that subject. They'll know
2 that the information came from me and then I will tell them
3 that it came from this guy.

4 Q1 Okay. So if I, if I had a conversation with Sergeant
5 Miedecke and, um, Sergeant Kearny where I ask them the same
6 question I asked you, is the policy, practice or custom of
7 anybody at the gang task force to use a source other than a
8 signed-up confidential informant for information for
9 affidavits for a warrant, and he told me no, that those two
10 sergeants, their, their information they're providing me is
11 inaccurate?

12 A1 Well, I'm not, I'm not saying that. I think, a, I'm kinda
13 confused on your question regarding a confidential source or
14 a source of information.

15 Q1 I'm saying with this subject information from him...

16 A1 Um-hum.

17 Q1 ...used in affidavits. You wrote in your e-mail is that
18 information provided by this CI has been used in recent
19 affidavits. Are you saying that...

20 A1 Yes.

21 Q1 ...information from this CI was used in recent affidavit?

22 A1 Yes. In the Pen Register affidavits.

23 Q1 So you can provide those affidavits?

24 A1 I'm sure. I passed the information on. We have active Pen
25 Registers.

26 Q1 Okay. So, if, if Sergeant Kearny and Sergeant Miedecke tell
27 me that unless an officer signed-up that CI their
28 information wouldn't be used. Is that not accurate?

1 A1 I don't, I, I don't know I've never considered that. Never,
2 never thought, never thought differently.

3 Q1 When you were assigned the gang task force, had you used
4 information from other sources for affidavits for warrants
5 that weren't signed up confidential informers?

6 A1 Yeah, reliable information, yeah. That's no different than
7 a witness.

8 Q1 So they'll be able to provide this information over at the
9 gang task force? And...

10 A1 Sergeant Miedecke might not be able to, yeah. But,
11 (unintelligible)...

12 Q1 Who, who could provide that information at gang task force?

13 A1 Um, if Mike Kelly put it in, I, let me just say it this way,
14 we're writing for the wiretap. The process, you go get the
15 call detail records first, to check activity. From there
16 you do a Pen Register to get current call detail records.
17 You still need probably cause or reasonable amount of
18 information to obtain those. I typed up something, using
19 the information this guy had given me and I passed that off
20 to Special Agent Mike Kelly who's assigned to the task
21 force. He puts it in, however he words it and puts it in
22 his affidavits, I don't know. But I passed information on
23 to him for the purpose of an affidavit.

24 Q1 So, but you don't know if it was act, actually ever used?

25 A1 I'm not a hundred percent, no. But I know we have Pen
26 Registers on Carlsbad gangsters and I was responsible for
27 the Carlsbad gangster affidavit.

1 Q1 But your email states the CI and other information provided
2 by the CI has been used. Would you say that that's an
3 affirmative statement?

4 A1 Based on what I know, I'd say yes.

5 Q1 Um, so, subs, subsequent to this meeting, April twenty-
6 seventh, and a couple of days later, a, when I spoke with
7 Sergeant Miedecke he said that you approached him again
8 about attempting to sign this subject up as a confidential
9 informant again. Is that correct?

10 A1 That was the only conversation that Sergeant Miedecke and I
11 had.

12 Q1 So this was the second time.

13 A1 I don't remember the first one.

14 Q1 He said that several months prior, you had attempted to...

15 A1 Oh, (unintelligible)...

16 Q1 ...(unintelligible) he was deported to Mexico,
17 (unintelligible) in Mexico. His statement to me was that
18 that subject could not be signed up because he could not be
19 managed if he's down in, in a foreign country. So then, on
20 or about May second or May third, there was another
21 conversation where you went into Sergeant Miedecke's office,
22 according to Sergeant Miedecke, and stated that you wanted
23 once again to try to sign this subject up as a confidential
24 informant. Did, did that conversation happen?

25 A1 The last part was something like that, a, did happen that
26 we'd gone into his office to protect the information? Yeah.
27 We talked about that and he said, he, he said that, a, I
28 didn't, I didn't need to sign him up. They weren't gonna

1 sign him up because of the Mexico, a, issue, and that I
2 could keep a file on him because we were getting information
3 from him.

4 Q1 So, in my conversations with Sergeant Miedecke, the subject
5 was not working as a confidential informant, um, his
6 statement to me is that the policy GTF is that you're to
7 shred any information you have regarding those confidential
8 informants if he's not going to be working for GTF. Are you
9 stating that was not what happened, you did not shred that
10 information? Regarding that...

11 A1 But he said I could keep a, a, a source file on him. He,
12 he, at that point he becomes a source of information.
13 Because we're, GTF is not paying him.

14 Q1 So, if Sergeant Miedecke tells me they're no longer
15 retaining any information, the subjects not going to be
16 working as a confidential informant, and he says that you
17 made a statement to him that you shredded the information,
18 that statement wouldn't be accurate?

19 A1 I've never mentioned anything like that. I, I, no, no I,
20 no, I, I, I didn't mention anything like that. I, I don't
21 even recall that being said.

22 Q1 So you never recalled any information about shredding the
23 information regarding the informant?

24 A1 No. I, I, I, I can't. I mean, I, if he said that there was
25 mention, I, I don't remember it.

26 Q1 He, he, in my conversation with him he said that he had a
27 conversation with you where you said that you had shredded
28 the information.

(unintelligible) in your second meeting with him, um,
Sergeant Miedecke said that you wanted to try to bring this
guy across the border and pay him. Was that
(unintelligible) accurate?

A1 No. No. I had made arrangements with, a, my partners to
meet him at the border to pay him for informa, to pay him
for the information he had already given me. That just
never transpired because I had never was able to make the
time to go down there and do it. I had all purposes and
intentions to pay him for the information that was comin'
in.

Q1 Um, so he, in, in my conversations with him, you stated that
you had said you, um, Sergeant Miedecke said how he was
going to sign him up again, sign him up. And you said,
"sign him up again." Was there a statement somewhat to that
made?

A1 No. The conversation with Sergeant Miedecke and I was very
short, and I, I, I don't recall much of that at all. And it
was, it was a pretty short conversation. Sergeant
Miedecke's not a guy for a lot for a lot of words.

Q1 Um-hum.

A1 I mean, it's bam-bam-bam and there were, I don't, I don't
recall that all. Maybe I wasn't paying full attention, but
I don't, I don't recall that at all.

Q1 Do you have anything?

Q2 (unintelligible)

A1 I get some air.

A2 Give us five minutes...

1 Q2 Sure.

2 A2 ...(unintelligible)around and (unintelligible).

3 Q2 Sounds good.

4 BREAK

5 Q2 (unintelligible) ask a couple of follow-up questions of the
6 stuff that Jason's already asked you. Um, a,
7 (unintelligible) now I've got to have rewind back to the
8 beginning of the interview. A, earlier you had said that
9 the CI was down there referring to Mexico, and that, um,
10 that he was unreliable and that you were trying to make him
11 reliable. So for clarification, when you said he was
12 unreliable, was it because he had provided you information
13 that was wrong, that you had corroborated or was he
14 untested? I want to make sure we don't play a game of
15 syntax.

16 A1 Um-hum.

17 Q2 Guess I want to make sure I can understand what you're
18 saying.

19 A1 Okay. The, a, I'm thinking my, maybe I, maybe I said it
20 wrong? The, the CI, and I use that interchangeably with
21 source of in, information 'cause it's common terminology
22 that we use. Um, the CI is down in Mexico. Um, he is a
23 reliable source of information. He was given to me by
24 Detective Eric Hoppe who had used him in Carlsbad on other
25 cases, for other, for other information. I had a, a new
26 source of information that I was trying to make reliable by
27 corroborating their information with the current CI.

28 Q2 Gotcha.

1 A1 And that's how we were getting, confirming, a,
2 (unintelligible), get more information on Petey Avalos.

3 Q2 So the other one was the one that was...

4 A1 Unreliable.

5 Q2 Was he unreliable because he provided information that
6 wasn't, a, that was bad? Or was he untested, and he just
7 wasn't made reliable yet? Do you understand what the...

8 A1 Yes. Yeah.

9 Q2 ...the distinction?

10 A1 Yeah. The, a, um, just to clarify--the CI that we're talking
11 about right now that led up to this report, he's a reliable
12 source.

13 Q2 Right.

14 A1 The one that's unreliable, they're unreliable, one 'cause
15 they're new, they haven't been tested, but they're, the
16 information they are providing me was very biased because
17 they, they had an agenda trying to get somebody arrested so
18 that they could benefit. So, you gotta be careful with that
19 if you're gonna use them. But, the information that I was
20 receiving pertaining, pertaining to Petey, I wanted to see
21 if it was reliable and, a, source of it, the CI in Mexico
22 would be able to confirm that. It would be information he,
23 (unintelligible), I received from (unintelligible) was the
24 same one he had heard about.

25 Q2 A, you had mentioned also as we go down your interview that,
26 that you had the significant case that you were working on
27 that I'm familiar with, and, yet you still had time to talk
28 to the CI and get information from him, and you did still

1 have time to pass the information on to your partner. Is
2 that correct?

3 A1 When you say still had time, I'm, that was like, as soon as
4 I got it I passed it.

5 Q2 Right.

6 A1 I mean there were, there was time, I didn't have time.

7 Q2 Right.

8 A1 I talked with the CI. He called me because he's nuts about
9 his status down there. A, I know he's nervous. I want to
10 take advantage of that. I want to help COV catch this guy.

11 Q2 Right. Right.

12 A1 A, and I know he knows.

13 Q2 Right.

14 A1 So, I took advantage of it.

15 Q2 So, as soon as you received the information from the CI you
16 pushed it, you just pushed it and relayed it right over to
17 the marshal?

18 A1 My partner stood right next to me...

19 Q2 Right.

20 A1 ...and, hey, this is what we got. So, 'cause I tried, I
21 thought Todd Lovelace was workin' the case, and then low and
22 behold he wasn't. But a, yeah, the time, I had no time.

23 Q2 And no, no time for one more call to...

24 A1 I...

25 Q2 ...(unintelligible).

26 A1 ...no, no. I...

27 Q2 Okay.

28 A1 ...I do.

1 Q2 That's it.

2 A1 I just forgot.

3 Q2 I understand. A, you just mentioned that when you were in
4 the room with, a, Sergeant Boyd you had a meeting with him,
5 your partner from ATF was there.

6 A1 Um-hum.

7 Q2 Can you identify who that was?

8 A1 Aaron Boone.

9 Q2 Okay. Was he in a position in the CO, VNIU office where he
10 could overhear your conversation? Was he part of the
11 conversation?

12 A1 He wasn't part of the conversation, a...

13 Q2 (unintelligible)

14 A1 ...yeah, we were, yeah we were all right there.

15 Q2 And where is Aaron right now, is he assigned to GTF?

16 A1 He's assigned to GTF.

17 Q2 Okay. Um, also you mentioned that you have this CI file, a,
18 when Sergeant Jackowski had asked you, a, "So there is a CI
19 file," and you said, "Yes." And he said, "Where is it." And
20 you said, "It is in my possession." Is it, is it a good
21 practice that you keep a CI file, or a source of information
22 file in your possession?

23 A1 I wouldn't...

24 Q2 Better to have it in your office where it's safe in case
25 your car gets burged or whatever?

26 A1 I wouldn't say it's the best practice, but I was building
27 the file, and every time I, every time I need to access it I
28

1 want it to be with me. I had an electronic copy of it and
2 so I wouldn't say it's the best practice, no. No.

3 Q2 If you're boss says that GTF knew that you had the CI file
4 outside of the office...

5 A1 Well...

6 Q2 ...how do you think they would react?

7 A1 ...a, they'd probably tell me not to do that. A, but at the
8 same time, you know, like I said, we use the word CI
9 interchangeably with the source of information. You know,
10 so, it would, he would, I was developing and trying to build
11 this package to present. So, I mean, that's why, that's why
12 I have it. And then, in the midst of all that, he gets
13 deported.

14 Q2 Um, also to the state that these guys are wanting this bite
15 of information, for lack of a better term, from this source
16 of information (unintelligible) that would help them either
17 go (unintelligible) paying, or help get some legal documents
18 so that they could, a, locate the guy over in Mexico. Um,...

19 A1 When you say "they," you're talking about COV or...

20 Q2 Yes, COV.

21 A1 ...U. S. Marshals?

22 Q2 COV. Um, when you generate these reports you generally
23 wouldn't have their name anywhere in it, would you?

24 A1 No.

25 Q2 I mean, there's only one place that their name is in the CI
26 file, right?

27 A1 On that file.

28 Q2 Right. And they are...

1 A1 (unintelligible)

2 Q2 ...referred to during those times by other terms like CI, CRI,
3 a, source...

4 A1 Human source.

5 Q2 ...a number...

6 A1 A number.

7 Q2 ...or a name.

8 A1 Um-hum.

9 Q2 'kay. So, um, you said that you were worried that they were
10 going to compromise, um, the CI and/or the source of
11 information because of that report. Would that report
12 really compromise them, because it's not, he's not
13 identified on that, that report anywhere. Was he?
14 (unintelligible) he wasn't, wouldn't be identified on that
15 report anywhere would he?

16 A1 No. He, he wouldn't, he wouldn't be identified in that, in
17 that report at all. One of the reasons, there was, you
18 know, and for me the, in the (unintelligible) the CI file
19 came out of the thin blue air, because it's normal practice
20 that we have. I mean, a, but there, when they were asking
21 these questions my, I had a lot of concerns. A lot of
22 concerns. One, I, I thought I was backed in a corner and
23 I'm tryin' to help them. They're, I know they would expose
24 the CI. 'Cause Sergeant Williams will, would want that like
25 they did on the last CI. They wanted the information to go
26 on their case because I don't think they concern themselves
27 about other, my cases. So, I was very concerned with that
28 because it, exposing the CI for a warrant on a guy down

1 there it would go in the, it, it would eventually, I believe
2 it was gonna go in a report. If that guy gets arrested
3 within the next six months, that becomes disclosed. We're
4 trying to go up, and they realize who the informant or
5 source of information was at that time, they're gonna,
6 those, those Carlsbad gangsters were, the suspects, they're
7 gonna know and they're gonna make the calls. And all the
8 work that we had started and money that we had spent, those
9 guys gonna drop their lines.

10 Q2 Wasn't the COV case on the homicide completed and the only
11 information that your source of information would have
12 provided was the location which would have been irrelevant
13 and not really included in the Carlsbad case.

14 A1 I would, I don't know that. I, I don't know how much of the
15 information they were gonna use. I thought they were going
16 to use the phone number. I don't know if they were use, use
17 (unintelligible) gang (unintelligible). I don't know if
18 they were gonna use it to (unintelligible), um, Angel
19 Martinez talkin' about it. I don't know what part of those...

20 Q2 And even if they hadn't used all of those...

21 A1 Um-hum.

22 Q2 ...to get a ping on a phone or to get a GPS track on this guy
23 somehow. How would that ever be included in the homicide
24 case? How would that, how would that ever be discovered?
25 How would that ever have any discovery issue?

26 A1 Everything's discoverable. They weren't gonna, I don't,
27 that's why I sent that e-mail. Not to, a, to, to seal that
28 portion, I, I wa, I, I wanted to protect all that

1 information. I, I didn't know how they were gonna use the
2 information. They may, from what I understand...

3 Q2 Okay.

4 A1 ...they already knew this information from Eric Hoppe. But,
5 he didn't write a report, yet they want one from me. So, I
6 mean, from our standing, they already had the information.
7 So I was telling 'em old information.

8 Q2 Um, the, maybe we'll play with this e-mail thing here just
9 for a moment. So, in the e-mail here it says, "The CI
10 (quoting from the e-mail here), the CI and other information
11 provided by the CI has been used in recent affidavits to
12 begin the wiretap for upcoming case." So, would he, would
13 the source of the information, the undoc, unofficial
14 document source of information used in an application for a
15 Title three wiretap or State wiretap.

16 A1 To the best of my knowledge, yes.

17 Q2 How could it have been done if he was not documented in your
18 guys's file? How could he have been, I mean, I'm not
19 talking about Pen Registers, not talking about Pen
20 Registers, different, different factor. I'm talking about
21 application for (unintelligible)...

22 A1 (unintelligible) for upcoming. We're still in the
23 preliminary stages of it.

24 Q2 Right.

25 A1 Yeah.

26 Q2 That's total, that's what I'm asking is.

27 A1 In the application for the actual Title Three wiretap, no.
28 He hadn't...

1 Q2 That's not the question I asked.

2 A1 He hadn't been (unintelligible)...

3 Q2 That's the question...

4 A1 ...(unintelligible) that case...

5 Q2 Right. Right.

6 A1 ...we're at the preliminary beginning...

7 Q2 Right.

8 A1 ...all the necessities you need...

9 Q2 Copy.

10 A1 ...to build that.

11 Q2 I (unintelligible) get that.

12 A1 So,...

13 Q2 That's why I, that's why I asked the question.

14 A1 Um-hum.

15 Q2 That's why I (unintelligible).

16 A1 Okay.

17 Q2 He wasn't used in the application for the Title Three, and,

18 it's not to say he couldn't be used down the road.

19 A1 Well, that's gonna be (unintelligible) all that, all the Pen

20 Registers for all that's discoverable on the Federal side...

21 Q2 Right. Right.

22 A1 So it all goes into the necessity of the...

23 Q2 Right. Right.

24 A1 ...a, source documentations for Title Three. So that's,

25 that's going to be out there.

26 Q2 You said that you went, a, we were thinking towards the end

27 of the interview you said that you were thinking about

28 trying to get, or make arrangements to go down to the border

1 to meet with the CI, to pay him. How could you pay the CI
2 if he's not documented with GTF? How would you, how would
3 you document that payment transaction? How would you do
4 that?

5 A1 Each, each one of the guys on the task force, the benefit of
6 being on the task force is, is you can take advantage of
7 everybody's, a, department policies for each perspective
8 agencies.

9 Q2 Right.

10 A1 The way I was using this guy is the same way they used him
11 here in Carlsbad. Eric Hoppe used him the same way. He
12 never signed any packet. He was never officially signed up,
13 but they used him the same way.

14 Q2 And they paid him?

15 A1 They paid him. Eric deactivated him from Carlsbad, which
16 Boyd said he wasn't, and gave him to me. And I was going to
17 use him the same way. But, eventually working to get him an
18 official number...

19 Q2 Okay.

20 A1 ...so that he can get paid by GTF. Not by any other agencies.
21 So, because we hadn't got to that stage in the
22 (unintelligible), got in the way of everything, a, me trying
23 to make time to go down and pay him. Chaco, from the U. S.
24 Marshal, they and, a, ATF and ICE, I'd already worked with
25 these, talked with these guys to get this guy some money to
26 keep the information coming. They each get to take funds
27 from their own respective department and pay towards an
28 investigative, a, case. So, I had arranged to get money

1 from these guys to pay this guy through the GTF because
2 there was a (unintelligible) to pay for, to pay for the
3 information that was coming. So the money was there, it was
4 just, I just didn't have time.

5 Q2 So, the documentation for how money would, would have been
6 spent if it had happened...

7 A1 Which was (unintelligible), it was supposed to happen.

8 Q2 ...would come out of, it would have gotten, gotten to you and
9 then it would have been circumvented to the other agencies,
10 whatever, whichever one it was, ICE or whoever you were
11 using (unintelligible), and then they would have managed it.
12 They would have taken care of the application of funds.

13 A1 Exactly. Exactly.

14 Q2 They would have been, that money would have been, that,
15 that, that would be taken care of by those guys.

16 A1 Through their process.

17 Q2 Right.

18 A1 Um-hum.

19 Q2 However it is.

20 A1 However it is. Yeah.

21 Q2 Not your problem.

22 A1 Not my problem.

23 Q2 Okay. Throughout this whole process and all the things that
24 Sergeant Jackowski has gone through throughout all of your
25 conversations starting with the ones in the COV area with
26 Williams and Christie, all the way through the, through the
27 ones that were in Lieutenant Magro's office, and the ones
28 that were with your sergeants over in GTF, and all this

1 other stuff. Were you, um, giving information out that was
2 truthful and honest or were you embellishing information to
3 make yourself look like a shot caller?

4 A1 I was never, ever trying to look like a shot caller or a big
5 baller or whatever. I, I, I, the, I never look at myself
6 like that. I, I, like most officers we're, we're confident,
7 you know, that's part of this job having a command presence.
8 I like what I do. I thought I was doing a great job. I
9 never, ever tried to look like that, especially working at
10 GTF, when they've got so many more senior guys there. You,
11 I would, I'd a big giant piece of humble pie the moment I
12 got there. It, it, that, that was never my intentions at
13 all. A, did I intentionally try to mislead 'em? Absolutely
14 not. I, I've been regretting it the second it came out, and
15 I, and I made a bad mistake for us.

16 Q2 What have you been trying to regret? What bad mistake did
17 you make?

18 A1 The meeting with Sergeant Williams and misleading him about
19 the, the file, trying to buy myself some time.

20 (unintelligible) I'm back in a corner (unintelligible) to
21 expose my case. I mean, that was a lot of hours, a lot of
22 hours go into these things. I mean, in, in like everything
23 I do with guys it's their way, right now, no matter what
24 (unintelligible)...

25 Q1 In an earlier part of our conversation you only said that
26 you misled Sergeant Kearny instead of saying that when you
27 provided that information to Lieutenant Magro, Sergeant
28 Williams, and Sergeant Boyd, that you met, misled them as

1 well regarding the, the existence of a former confidential
2 informant file?

3 A1 In that meeting there wa, it wasn't where I said that it was
4 gonna be. The file wasn't in GTF locked up. I had it with
5 me.

6 Q1 Wouldn't it have just been, just as easy to say, "I have the
7 file with me, but I can't provide you with this inf, I want
8 to talk to my supervisors at GTF prior to providing you with
9 the information?"

10 A1 In hindsight, yes. At the moment, and the, the tone, and
11 the, the, the aggressiveness in that office, the, I have,
12 you, you know, you don't understand Sergeant Jackowski what
13 I've been goin' through for the last, this is a culmination
14 of, of the behavior that I've been receiving. And from
15 these, Sergeant Williams and Hargett backed by, a, now
16 backed by Magro, I truly feel like every time I'm with those
17 guys I'm in the lion's den and I'm dinner. No matter how
18 helpful I try to be, no matter how much information I give
19 'em, it's never good enough. It, it's the way they want it,
20 how they want it, and I literally it's like walking on egg
21 shells every time I'm around those guys.

22 Q1 So did you feel you had to mislead them in order to appease
23 them later?...

24 A1 No.

25 Q1 ...To provide them the information?

26 A1 No. By me saying that the file was at GTF. There was no
27 thought in that. That was, that came out of thin air.

1 Q1 Wouldn't it have just mitigated everything that's happening
2 today if you would have said, "One, that I didn't document
3 the information from the informant." There's no written
4 record of it anywhere. And "two, that I have, whatever
5 information I do have from the informant, I have it with
6 me." Wouldn't that have alleviated everything from that day
7 forward until where we are right now?

8 A1 In hindsight, absolutely. I, I, I regret it absolutely.

9 Q1 So you told them that that a document exists, that never
10 existed. A file existed, that wasn't the confidential
11 informant file that only existed in your own possession.

12 A1 Well, I called it an informant file.

13 Q1 Is that, is that accurate?

14 A1 That was misleading, yes.

15 Q1 Okay.

16 A1 Yeah. An, an, and I, I, I, it, it came out because that's
17 how we normally do business. And that was not, I, I'm, I
18 realize that I, I put no thought in that at all. I wanted
19 to get out of that office as quick as possible. There's, it
20 was, it was not, I was so stressed out in that, that thing.
21 I mean, even Sergeant Boyd eventually had to intervene
22 because it was so, and I called him afterwards. I, I, I was
23 literally so stressed afterwards that, I go, "Sarg, this is
24 every, every time I deal with the guys we have
25 (unintelligible), I have to be accusatory. Now they imply
26 everything I do is horrible, it's wrong.

27 Q1 I just don't understand how being misleading that you say,
28 or possibly untruthful would make anything regarding your

1 situation, that environment better. That wasn't a question,
2 actually a statement, but, you know, how, how
3 (unintelligible)...

4 A1 (unintelligible) is clear. I, I wanted to get out of that
5 office as soon as possible and that's what came out. That
6 I, that it, that was, that basically ended the conversation,
7 and Boyd finally stepped in and I'm like, I'm out. I, I, I,
8 it was just, it was nothing, and again...

9 Q1 At any time after that conversation in that meeting did you
10 think, "You know what, I should just call up Sergeant Boyd..."

11 A1 Yes.

12 Q1 "...stand tall for it and tell him, there's no confidential
13 file that existed."

14 A1 I, I tried calling Sergeant Boyd. Four times I attempted to
15 contact him and he deliberately, I don't know what his
16 reasons were, he would not return any of my calls.

17 Q1 Send him a text (unintelligible)?

18 A1 I sent him a text, yep. I said, "Hey, you clear for a
19 call?" He said he was at dinner. I said, "Can you please
20 call me when you're done." (unintelligible)

21 Q1 But prior to Lieutenant Magro or Sergeant Boyd?

22 A1 Honestly Sarg, I, I didn't feel I could go to Magro. I
23 didn't feel I could go to, definitely not Sergeant Williams.
24 I, I go, I, I felt Sergeant Boyd was my, my only option, and
25 I'm, I obviously made a poor judgment. I, I would, I felt
26 that I was, I would, it would, I didn't have any other
27 options and I tried to go with Sergeant Boyd and eventually
28

1 tell him everything, but he wouldn't, he wouldn't take any
2 of my calls.

3 Q1 We just seem to be in a different place then where we were
4 fifteen, twenty minutes ago we were having a conversation
5 about the meeting with Lieutenant Magro, with all the
6 excuses about the existence of the file which you had told
7 them, and now its, you know, you're admitting that you
8 misled them regarding that information.

9 A1 Did I not say that earlier?

10 Q1 I, I, I don't recall it exactly happening like that, but
11 I'll have to review the tape and then when I go through it.
12 But you seem to be more forthcoming now in your conversation
13 with us.

14 A1 I've been, I've, I've (unintelligible) answered all the
15 questions. I know I answered all the questions honestly.
16 The words they chose in the meetings weren't the word that
17 you were, that you were saying.

18 Q1 All right.

19 A1 They, they (unintelligible)...

20 Q1 (unintelligible) were based on what they told me afterwards
21 because (unintelligible)...

22 A1 (unintelligible) they had plenty of time to think about
23 where I, what the proper words to use.

24 Q1 Sure.

25 A1 Just like I use CI versus source of information. I mean,
26 it's interchangeable. I mean, it's just, just kinda how we
27 use it.

28 Q1 Uh-huh.

1 A1 I mean, but I, there, there would, you know, after, there
2 was nothing here that I intentionally tried to do.
3 Absolutely not. There was no, no way I would jeopardize my
4 career. It, it just would never about, I mean I can't
5 emphasize that enough.

6 Q1 Okay. (unintelligible). One more thing, um, Sergeant Koran
7 wrote a supplement, did, did you contact Sergeant Koran on
8 or about May second, two thousand twelve at about seventeen
9 twenty-three hours? At his residence while he was off duty.

10 A1 I think so yes.

11 Q1 Did you send him a text message?

12 A1 I can't remember.

13 Q1 Did you send him a text, do you recall sending him a text
14 message where you asked him if he was clear for a phone
15 call?

16 A1 I may have.

17 Q1 According to Sergeant Koran you did, and that you had a
18 conversation. Um, and during that conversation you stated
19 you stepped on it. And we're, we're asking him for
20 information about either going with a rep or an attorney.
21 Do you recall that conversation?

22 A1 Yes I do.

23 Q1 What did you mean when you stated, "I stepped on it."

24 A1 That I mislead Sergeant Williams and them.

25 Q1 And, (unintelligible) did you guys have any other
26 discussions from that conversation?

27 A1 I can't remember (unintelligible), that's pretty much the
28 gist of it. I didn't tell him what I did. I, I truly

1 didn't think I could tell anybody. I was, I was, I was
2 completely, I just didn't think I could, I could tell
3 anybody. I just wanted to be done with it. I wasn't, and I
4 wasn't, I wasn't trying to make a bad situation worse. I
5 really wasn't. I just didn't know what to do.

6 Q1 Can you think of any other information that might be
7 beneficial to this case? I know I'm not asking a question,
8 but if there's any other statement you wanted to make or...

9 A1 No. I, a,...

10 Q1 ...something that we haven't asked that you wanted to provide?

11 A1 ...no, other than, I mean, I, I did not intentionally set out
12 to cause this situation. I did not intentionally try to
13 mislead Sergeant Williams, even though, even regardless of
14 our past history, and how much they dislike me, I still have
15 a job to do and I, and I've said that to many people. I
16 will do my job in a professional manner. None of this was,
17 was ever thought out to be this, it, it, I, I regret it. I
18 mean, I, I, and I didn't think I could truly turn to
19 anybody. And I felt if I gave them the accurate
20 information, it would be okay. I tried to talk to Sergeant
21 Boyd, he wouldn't return any of my calls, wouldn't respond
22 back to my text messaging. (unintelligible) Greg Koran,
23 we're good friends, I could, I couldn't even feel I could
24 tell him. I just didn't feel like I could talk to anybody,
25 because I had already talked to the Captain about the
26 relationship I had with, with Hargett and Mil, Williams, I
27 even talked to the Chief about it. I really didn't think
28 anybody was gonna help me. I, I, I felt like I was on an

1 island by myself, and that, that I, that I literally felt
2 that way for years with these guys.

3 Q2 Um, you (unintelligible). A, were you called by Cheri
4 Abbott in Human Resources to talk about a potential admin
5 forty-five, um, violation by this group of people.

6 A1 Yes I was.

7 Q2 Did you meet with her?

8 A1 I did.

9 Q1 Did she ask you about the, this, a, work environment that
10 you were working in?

11 A1 She did.

12 Q2 And, how did you respond?

13 A1 Before I gave her the answer, I had already talked with
14 Captain Rowland. He shared his personal, a, experiences
15 with me. I talked to the Chief, he shared some personal
16 experiences with me. And, and I told them both, there's,
17 there's no way I'm going forward with a hostile work
18 environment with these guys. And I, basically laid it out
19 to them that, the Captain got wha, Captain told me he's got
20 less than a year left, he's gone. He's not going to help
21 me. The Chief, five year contract, he, he's gone. Now I,
22 I, I was pretty candid with him. I go, "I can either have a
23 comfortable thirteen years or I can have another miserable
24 thirteen years." These guys will never forget if I go
25 forward on hostile work environment. Do I want to subject
26 myself to, to more of this? Absolutely not! I mean, this
27 is, this is, this is not just affecting me professionally,
28 with my family. I mean, this goes, I mean I, the medica, I

1 mean there's a lot of other things goin' on here that, that,
2 that's been the cause and effect of this thing. So there's
3 no way that I was gonna go forward with a hostile work
4 environment, just because of the repercussions that I would
5 feel later on. And when Cheri Abbott asked me that, no, I
6 didn't tell her that. I told her I was at peace with
7 myself. I mean, I do my job, and I'm gonna finish my career
8 with the least amount of action I can, and just go forth,
9 'cause these guys are never gonna (unintelligible). And
10 she, she asked me, "Do you feel like there's going to be
11 some retaliation?" And when she said that to me, I'm
12 thinking like any other cop, I'm not afraid of anybody. I'd
13 never, ever thought the other way, that it would be more
14 career sabotaged. I, I, my first impression it was, I mean,
15 (unintelligible), you know try to fight me or somethin',
16 (unintelligible) my (unintelligible) I mean, I work with
17 gangs, that's what my first impression of that
18 (unintelligible). I mean, that's why I didn't,
19 (unintelligible) retaliation, and then, never thought about
20 the other side.

21 Q2 So, I guess we'll go back to my question. So, how did you
22 respond to Cheri Abbott when she asked you if you're working
23 in a hostile environment?

24 A1 I told her I was at peace with myself and I'm not going to
25 go forward with the hostile work environment. A,
26 (unintelligible).

27 Q2 And then when she asked you about the retaliation, how did
28 you respond to that?

1 A1 I said I, I, I wouldn't, tell her I didn't feel any
2 retaliation, 'cause I was thinking violence. I was not
3 thinking anything other than violence. I, I didn't realize,
4 I didn't think that it would affect my career like she was
5 probably thinking, and I wasn't thinking that mentality at
6 all.

7 Q2 But you're confusing me a little bit Jesse, so just walking
8 through it then, 'cause you just got done telling them
9 (unintelligible), you just got done telling us that your,
10 the reason, one of the reasons why that you felt compelled
11 because you wanted to have a longer career here without a
12 lot of repercussions from this group of people that are
13 allegedly making your life miserable.

14 A1 Um-hum.

15 Q2 So, I mean, it doesn't sound like retaliation to me.

16 A1 That is retaliation, but the, when she asked me about
17 retaliation, my first thought was physical retaliation, and
18 that's why I said no.

19 Q2 All right. And do you remember talking to Captain Rowland
20 or Chief Morrison, and then, a, telling you that when you
21 got called over here that you should tell her the truth?

22 A1 They said I should tell her everything.

23 Q2 Yes.

24 A1 And I told them why I wouldn't.

25 Q2 I don't have any more questions.

26 Q1 Okay. We have not further questions at this time. On
27 behalf of the Chief of Police I'm ordering you not to
28 disclose anything we've discussed during this interview or

1 anything regarding this investigation with anyone, other
2 than your representative or legal counsel. To do so would
3 be insubordination, and by itself would subject you to
4 disciplinary action up to and including termination. Do you
5 understand?

6 A1 Yes.

7 Q1 This concludes the interview and the time is now fifteen
8 fifty hours.

9 END OF INTERVIEW



CITY OF
CARLSBAD
Police Department

Confidential Memorandum

May 22, 2012

TO: Officer Jesse Flores

FROM: Sergeant Jason Jackowski
Professional Standards and Services Division

RE: **INTERNAL AFFAIRS INVESTIGATION 12-17**

An administrative investigation is currently being conducted into events which allegedly occurred beginning on April 27, 2012. It is alleged that you violated department policy §340.3.5 (i) and §340.3.5 (ad) when you purportedly were untruthful in providing information to Carlsbad Police Department supervisors regarding the existence of a confidential informant file and were untruthful in an email report to supervisors stating that a subject known to you was an active informant in current Gang Task Force cases. It is also alleged that you violated department policy §340.3.5 (c) when you failed to report information in a timely manner related to the location of a wanted homicide suspect.

On behalf of the Chief of Police, I am ordering you to report to my office on Thursday, May 31, 2012 at 1400 hours to answer questions relating to this administrative investigation. Failure to appear will be considered an act of insubordination and can be an independent basis for disciplinary action, up to and including dismissal.

I am the fact-finder in this investigation. Lieutenant Paul Mendes and I will be interviewing you and no one else will be present.

The investigative interview will be recorded. You will have access to the recording if any further proceedings are contemplated or prior to any further investigative interview at a subsequent time. You have the right to bring your own recording device and record any and all aspects of the investigative interview.

You have the right to be represented by a representative of your choice who may be present at all times during the investigative interview. This representative shall not be a person subject to the same investigation. If your representative is not an attorney, you must notify me who you would like to represent you prior to contacting them or discussing this investigation with them. This will ensure that the person selected is not connected to this investigation. Should you have any questions or concerns contact me.

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TO: Officer Jesse Flores

RE: INTERNAL AFFAIRS INVESTIGATION 12-17

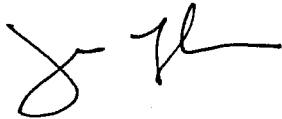
You are ordered not to discuss this investigation or its subject matter with other employees of the City, except for me or your representative.

Failure to comply fully with the provision of this notice shall be deemed an act of insubordination, and may result in disciplinary action, up to and including dismissal.

Please contact me if you have any questions prior to the interview.

I have received a copy of this memorandum and I agree to comply with the orders issued.

Signed:

A handwritten signature in black ink, appearing to be "J. Flores", written over the "Signed:" label.

Date: 5-22-2012

INTERVIEW ADMONITION FOR PEACE OFFICERS

NON-CRIMINAL ACTION

START RECORDING

I am **Sgt. Jason Jackowski** and I am the officer in charge of this investigation for the Carlsbad Police Department. We are in the Human Resources Conference Room at the Faraday Facility.

☐ No one will be assisting me with this interview today.

☒ **Lt. Paul Mendes** is also present and will be assisting with this interview.

Present at this interview is **Officer Jesse Flores**.

☒ Michael Williamson is also present and will be acting as your representative / legal counsel.

☐ If the employee chooses not to have a representative, indicate so on the recording by stating:

_____, do you understand per Government Code § 3303(i) as the accused in this matter you have the right to have a representative present during this interview? A: _____.

Are you waiving your right to have a representative present? A: _____.

Today's date is May 31, 2012. The current time is 1:27 PM.

Pursuant to Government Code § 3303(g), I am recording this interview. **Officer Flores**, you have the right to record the interview as well.

Are you taking any medication which would cause you to be unable to understand and respond truthfully and fully to the questions that will be asked of you? A: _____.

Have you failed to take any prescription or other medication which would assist you to understand and respond truthfully and fully to the questions that will be asked of you? A: _____.

Are you suffering from any physical or mental condition that will cause you to be unable to understand and respond truthfully and fully to the questions that will be asked of you? A: No.

The purpose of this interview is to discuss IA case # **12-17**.

The allegations focus on, but are not limited to Carlsbad Police Department Policies:

§340.3.5 (i): *The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any department record, book, paper or document.*

§340.3.5 (ad): *Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.*

§340.3.5 (c): *Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without a reasonable and bona fide excuse.*

The nature of this investigation is that you purportedly were untruthful in providing information to Carlsbad Police Department supervisors regarding the existence of a confidential informant file and were untruthful in an email report to supervisors stating that a subject known to you was an active informant in current Gang Task Force cases. It is also alleged that you violated department policy when you failed to report information in a timely manner related to the location of a wanted homicide suspect.

LYBARGER ADMONISHMENT

Today's questioning concerns administrative matters relating to the official business of the Carlsbad Police Department. I am not questioning you for the purpose of instituting a criminal complaint against you. If, however, during the course of this questioning you disclose information, which indicates that you may be guilty of criminal misconduct, neither your self-incriminating statements nor the fruits of any self-incriminating statements you make to me will be used in any criminal legal proceedings.

Q. Officer Flores, do you understand what I just read to you? A: YES

Q. Do you have any questions regarding what I read? A: NO

On behalf of the Chief of Police, I now order you to completely and truthfully answer my questions. Failure to answer my questions will be deemed insubordination and will subject you to discipline, up to and including termination.

Q. Do you understand? A: YES

BEGIN QUESTIONING

have no further questions at this time. On behalf of the Chief of Police, I am ordering you not to disclose anything we discussed during this interview or anything regarding this investigation with anyone (other than your representative or legal counsel). Doing so would be insubordination and by itself would subject you to disciplinary action, up to and including termination. Do you understand? A: _____

This order will be automatically lifted when you are given notice of the findings by your division commander.

This concludes the interview. The time now is 1556.

STOP RECORDING



CITY OF
CARLSBAD
Police Department

Confidential Memorandum

May 7, 2012

TO: Lieutenant Matt Magro

FROM: Sergeant Jason Jackowski
Professional Standards and Services Division

RE: **INTERNAL AFFAIRS INVESTIGATION 12-17**

This is to inform you that a complaint has been received against an officer of this department and you have been identified as a potential witness. Due to the nature of the complaint you will be interviewed to determine if you can provide any relevant information. I have scheduled your interview for MAY, 7 2012 at 0940 hours in my office.

Even though you are not the subject of this investigation, you will be allowed to have a representative of your choice present during your interview if you desire. Your representative may be an attorney, a member of the Police Association, or anyone else not connected with this investigation. If your representative is not an attorney, you must notify me who you would like to represent you prior to contacting them or discussing this investigation with them. This will ensure that the person selected is not connected to this investigation. Should you have any questions or concerns contact me.

On behalf of the Chief of Police, I am officially ordering you of the following: Do not discuss this investigation or the allegations with anyone other than your chosen representative, your attorney or me. This includes but is not limited to, any conversation either in person, by telephone, or any written or electronic communication, either on or off duty. Your failure to abide by this order will be deemed insubordination, pursuant to Carlsbad Police Department Policy § 340.3.5(e) - Performance, and may result in discipline, up to and including termination. MM (Initial)

Respectfully,

Sergeant Jackowski

I have received a copy of this memorandum and I agree to comply with the orders issued.

Signed: Matt Magro Date: 5/7/12

INTERVIEW ADMONITION FOR PEACE OFFICERS

WITNESS

START RECORDING

I am SERGEANT JACKOWSKI (Rank and Name) and I am the officer in charge of this investigation for the Carlsbad Police Department.

Today's date is MAY 7, 2012. The current time is 0940.

We are in MY OFFICE at the Carlsbad Police station.

☒ No one will be assisting me with this interview today.

☐ _____ (Rank and Name) is also present and will be assisting with this interview.

Present at this interview is (Witness Rank and Name) LT. MATT MACRO.

☐ _____ is also present and is being permitted to act as your representative.

☐ Are ~~(both of)~~ you are aware that representation at this point is not an afforded right under the Peace Officer's Bill of Rights because you are a witness officer? A: YES.

This interview is being recorded.

The purpose of this interview is to discuss an allegation of misconduct by OFFICER JESSE FLORES on 4/27/2012 (specifically 304.3.5 (ad) - PERFORMANCE.)

Today's questioning concerns administrative matters relating to the official business of the Carlsbad Police Department. On behalf of the Chief of Police, I now order you to answer my questions completely and truthfully. If at any point I determine your involvement is more than that of a witness, I will stop the interview and we will reschedule for a later time wherein you will be provided with all the rights afforded to an accused officer per the Peace Officer Bill of Rights.

Q: LT. MACRO, do you understand what I just read to you? A: YES

Q. Do you have any questions regarding what I read? A: NO

BEGIN QUESTIONING

I have no further questions at this time. On behalf of the Chief of Police, I am ordering (both of) you not to disclose anything we discussed during this interview or anything regarding this investigation with anyone (other than each other.) However, you may speak with legal counsel should you choose to consult an attorney.

Disclosure of anything we discussed during this interview would be considered insubordination and by itself would subject you to disciplinary action, up to and including termination. LT. MACRO, do you understand? A: YES

This order will remain in effect indefinitely due to the nature of the investigation.

This concludes the interview. The time now is 1013.

STOP RECORDING



CITY OF
CARLSBAD
Police Department

Confidential Memorandum

May 7, 2012

TO: Sergeant Mickey Williams

FROM: Sergeant Jason Jackowski
Professional Standards and Services Division

RE: **INTERNAL AFFAIRS INVESTIGATION 12-17**

This is to inform you that a complaint has been received against an officer of this department and you have been identified as a potential witness. Due to the nature of the complaint you will be interviewed to determine if you can provide any relevant information. I have scheduled your interview for 5-7-2012 at ~~0200~~ 1400 hours in my office.

Even though you are not the subject of this investigation, you will be allowed to have a representative of your choice present during your interview if you desire. Your representative may be an attorney, a member of the Police Association, or anyone else not connected with this investigation. If your representative is not an attorney, you must notify me who you would like to represent you prior to contacting them or discussing this investigation with them. This will ensure that the person selected is not connected to this investigation. Should you have any questions or concerns contact me.

On behalf of the Chief of Police, I am officially ordering you of the following: Do not discuss this investigation or the allegations with anyone other than your chosen representative, your attorney or me. This includes but is not limited to, any conversation either in person, by telephone, or any written or electronic communication, either on or off duty. Your failure to abide by this order will be deemed insubordination, pursuant to Carlsbad Police Department Policy § 340.3.5(e) - Performance, and may result in discipline, up to and including termination. MW (initial)

Respectfully,

Sergeant Jackowski

I have received a copy of this memorandum and I agree to comply with the orders issued.

Signed:

M. WILLIAMS

Date:

5-7-12

INTERVIEW ADMONITION FOR PEACE OFFICERS

WITNESS

START RECORDING

I am Sgt. Jason Jackowski (Rank and Name) and I am the officer in charge of this investigation for the Carlsbad Police Department.

Today's date is 5-7-2012. The current time is 1416.

We are in MY OFFICE at the Carlsbad Police station.

☒ No one will be assisting me with this interview today.

☐ _____ (Rank and Name) is also present and will be assisting with this interview.

Present at this interview is (Witness Rank and Name) Sgt. Mocket Williams.

☐ _____ is also present and is being permitted to act as your representative.

☐ Are (both of) you are aware that representation at this point is not an afforded right under the Peace Officer's Bill of Rights because you are a witness officer? A: YES.

This interview is being recorded.

The purpose of this interview is to discuss an allegation of misconduct by Off. Jesse Flores on 4/27/2012 (specifically 304.315 (ad) - PERFORMANCE).

Today's questioning concerns administrative matters relating to the official business of the Carlsbad Police Department. On behalf of the Chief of Police, I now order you to answer my questions completely and truthfully. If at any point I determine your involvement is more than that of a witness, I will stop the interview and we will reschedule for a later time wherein you will be provided with all the rights afforded to an accused officer per the Peace Officer Bill of Rights.

Q: Sgt. Williams, do you understand what I just read to you? A: YES

Q. Do you have any questions regarding what I read? A: NO

BEGIN QUESTIONING

I have no further questions at this time. On behalf of the Chief of Police, I am ordering (both of) you not to disclose anything we discussed during this interview or anything regarding this investigation with anyone (other than each other.) However, you may speak with legal counsel should you choose to consult an attorney.

Disclosure of anything we discussed during this interview would be considered insubordination and by itself would subject you to disciplinary action, up to and including termination. Sgt. Williams, do you understand? A: YES

This order will remain in effect indefinitely due to the nature of the investigation.

This concludes the interview. The time now is 1446.

STOP RECORDING



CITY OF
CARLSBAD
Police Department

Confidential Memorandum

May 1, 2012

TO: Sergeant Chris Boyd

FROM: Sergeant Jason Jackowski
Professional Standards and Services Division

RE: **INTERNAL AFFAIRS INVESTIGATION 12-17**

This is to inform you that a complaint has been received against an officer of this department and you have been identified as a potential witness. Due to the nature of the complaint you will be interviewed to determine if you can provide any relevant information. I have scheduled your interview for 5-8-2012 at 1100 hours in my office.

Even though you are not the subject of this investigation, you will be allowed to have a representative of your choice present during your interview if you desire. Your representative may be an attorney, a member of the Police Association, or anyone else not connected with this investigation. If your representative is not an attorney, you must notify me who you would like to represent you prior to contacting them or discussing this investigation with them. This will ensure that the person selected is not connected to this investigation. Should you have any questions or concerns contact me.

On behalf of the Chief of Police, I am officially ordering you of the following: Do not discuss this investigation or the allegations with anyone other than your chosen representative, your attorney or me. This includes but is not limited to, any conversation either in person, by telephone, or any written or electronic communication, either on or off duty. Your failure to abide by this order will be deemed insubordination, pursuant to Carlsbad Police Department Policy § 340.3.5(e) - Performance, and may result in discipline, up to and including termination. LMB (Initial)

Respectfully,

Sergeant Jackowski

I have received a copy of this memorandum and I agree to comply with the orders issued.

Signed:

LMB #5165

Date:

0508-12

INTERVIEW ADMONITION FOR PEACE OFFICERS

WITNESS

START RECORDING

I am Sgt. Jason Jackowski (Rank and Name) and I am the officer in charge of this investigation for the Carlsbad Police Department.

Today's date is May 8, 2012. The current time is 1106.

We are in My OFFICE at the Carlsbad Police station.

☒ No one will be assisting me with this interview today.

☐ _____ (Rank and Name) is also present and will be assisting with this interview.

Present at this interview is (Witness Rank and Name) Sgt. Curtis Boyd.

☐ _____ is also present and is being permitted to act as your representative.

☒ Are (both of) you ~~are~~ aware that representation at this point is not an afforded right under the Peace Officer's Bill of Rights because you are a witness officer? A: YES.

This interview is being recorded.

The purpose of this interview is to discuss an allegation of misconduct by Ofc. Jesse Flores on April 27, 2012 (specifically 304.3, 5 (ad) - PERFORMANCE.)

Today's questioning concerns administrative matters relating to the official business of the Carlsbad Police Department. On behalf of the Chief of Police, I now order you to answer my questions completely and truthfully. If at any point I determine your involvement is more than that of a witness, I will stop the interview and we will reschedule for a later time wherein you will be provided with all the rights afforded to an accused officer per the Peace Officer Bill of Rights.

Q: Sgt. Boyd, do you understand what I just read to you? A: YES

Q. Do you have any questions regarding what I read? A: NO

BEGIN QUESTIONING

I have no further questions at this time. On behalf of the Chief of Police, I am ordering (both of) you not to disclose anything we discussed during this interview or anything regarding this investigation with anyone (other than each other.) However, you may speak with legal counsel should you choose to consult an attorney.

Disclosure of anything we discussed during this interview would be considered insubordination and by itself would subject you to disciplinary action, up to and including termination. Sgt. Boyd, do you understand? A: YES

This order will remain in effect indefinitely due to the nature of the investigation.

This concludes the interview. The time now is 1113.

STOP RECORDING

EMPLOYEE RECEIVING COMPLAINT: _____

TIME & DATE: _____

☐ IN PERSON ☐ U.S.MAIL ☐ MESSENGER/CERTIFIED MAIL ☐ OTHER: _____

PROFESSIONAL STANDARDS USE ONLY

REVIEWED BY: Sgt. KORAN DATE: 5/3/12 I.A. CASE # 12-17

NATURE: ☐ Use of Force, ☒ Honesty, ☐ Race/Bias, ☐ Civil Rights, ☐ Other:

ASSIGNED FOR INVESTIGATION

☒ Yes, assigned to: Sgt. JACKOWSKI

☐ No, complaint RESOLVED per Department Policy.

Officer's acknowledgement: _____ Date: _____

Division Commander: _____ Date: _____

CARLSBAD POLICE DEPARTMENT
2560 ORION WAY, CARLSBAD, CA 92010

SUPERVISOR'S COMPLAINT SUMMARY

TO BE COMPLETED BY LIEUTENANT OR SERGEANT

| | | | |
|------------------------------|-------------|----------------------|----------------------------------|
| COMPLAINANT'S NAME | | DATE OF BIRTH | HOME PHONE |
| Sgt. Chris Boyd | | | |
| COMPLAINANT'S ADDRESS | CITY | STATE | ZIP |
| Carlsbad PD | | | |
| LOCATION OF INCIDENT | CITY | ZIP | DATE AND TIME OF INCIDENT |
| Carlsbad PD | | | April 27, 2012 |

NAME(S) OF POLICE PERSONNEL INVOLVED

Officer Jesse Flores

BRIEF NARRATIVE OF COMPLAINT

On April 27, 2012, Officer Flores had a conversation with Sgt. Williams. During that conversation, Officer Flores stated he had received information from an informant of his regarding possible information about the location of a suspect (for whom an active felony warrant existed) wanted in a Carlsbad homicide case. Officer Flores told Sgt. Williams that the information had become known to him approximately one month prior. Based upon the above conversation, Sgt. Williams informed Lt. Magro and I that he was concerned about the lack of timeliness in the sharing of information pertinent to a homicide investigation. I then arranged to have Officer Flores meet with Sgt. Williams, Lt. Magro and I to attempt to resolve the issue.

On the afternoon of April 27, Officer Flores, Sgt. Williams, Lt. Magro and I met in Lt. Magro's office. During the meeting, Officer Flores characterized his oversight in not sharing the information in a more timely manner as a "brain fart". Officer Flores reiterated that he had had a conversation with his C.I. about the possible location of the wanted suspect approximately one month prior. I asked Officer Flores if he had documented the information in a C.I. contact report. He responded, "Yes, I am sure I did". I then asked him to obtain a copy of the contact report. He responded he could not share the C.I. report outside of GTF. I told him he could provide a redacted copy of the report which would not disclose the identity of the informant or other sensitive information, but would provide enough detail to allow the furtherance of a COV homicide investigation. Officer Flores was specifically told that it was hoped that the information he provided could be used in an affidavit for a search warrant of phone records. Officer Flores told me (us) he would write a report after reviewing his initial C.I. contact report. He stated he would be busy in court the following week but would provide it by Thursday, May 03, 2012.

On the evening of Monday, April 30, at approximately 2117 hours, Officer Flores called me on my cell phone. He told me that neither of the two GTF Sergeants (Kearny or Miedecke) had been available to allow him access to the C.I. file. I told him it was important to provide the report the following day. He told me he would do his best to provide it as soon as possible. On Tuesday, May 1, Officer Flores called me in the late afternoon/early evening. He told me that he had written the report "from his recollection" as he had still not been able to gain access to the original file. He told me he was concerned about the "100% accuracy" of the report since it was only based upon his recollection. He additionally told me he would attempt to have Sgt. Kearny meet him at GTF that night if he was available to do so. At 1849 hours I received a text message from Officer Flores on my cell phone: "Made contact. They will have it 1st thing in the morning". I took this as meaning he had made contact with Sgt. Kearny and COV ("they") would receive the requested information the following morning (Wednesday, May 2).

On Wednesday, May 2, at 0723 hours, I received an e-mail from Officer Flores. The e-mail was sent to Sgt. Williams, Detective Hargett and I. Lt. Magro was also cc'd. The e-mail subject line was "CI Report 11-1853" and there was an attachment with the same name. The non-attached narrative of the e-mail stated:

To All,

Here is the report. All I ask is that if you use this in your affidavit please seal this portion. The CI and other information provided by the CI has been used in recent affidavits to begin the wire tap for our upcoming case. Compromising the CI will compromise our wire tap. Thanks for understanding. As for the CDR's of Angel Martinez's phone I'm still working on that.

Jesse

I reviewed his written report attached to the e-mail and had questions about its contents and vagueness. I decided to make contact with Sgt. Kearny at GTF to attempt to review the original CI contact documentation. At approximately 1530 hours I met with Sgt. Kearny and Sgt. Miedecke. During our conversation I learned that there was no CI file and that the "CI" was not a "CI". I was told specifically by Sgt. Miedecke that Officer Flores had requested to sign up the CI 2-3 months ago but that he was not approved as he was deemed ineligible due to having been deported to Mexico and still living in Mexico rather than the United States. Sgt. Miedecke also told me that Officer Flores had attempted to convince Sgt. Miedecke to allow Officer Flores to sign up the CI this very morning- Wednesday, May 2, 2012. Sgt. Miedecke had again told Officer Flores that the individual remained ineligible as he was still living in Mexico.

Based upon Officer Flores' statements to Sgt. Williams, Lt. Magro and I about having documented an informant contact when in fact the subject was not a GTF informant and no such documentation had occurred, I believe Officer Flores has violated department policy and expectations regarding truthfulness.



CITY OF
CARLSBAD
Police Department

Confidential Memorandum

May 3, 2012

TO: Jesse Flores, Officer

FROM: Jason Jackowski, Sergeant
Professional Standards and Services Division Supervisor

RE: **NOTICE OF PAID ADMINISTRATIVE LEAVE AND RELATED ORDERS; IA 12-17**

The purpose of this CONFIDENTIAL MEMORANDUM is to provide you with notice that effective immediately upon its service; your work status is converted to that of paid administrative leave. Said status shall remain in full force and effect until modified in writing. Your placement in a paid administrative leave capacity is in relation to the matters being investigated by the Department in Internal Affairs Investigation 12-17.

On behalf of the Chief of Police, until otherwise advised in writing, THE FOLLOWING ORDERS SHALL GOVERN YOUR PAID ADMINISTRATIVE LEAVE STATUS:

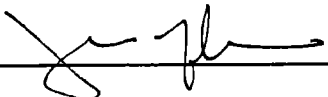
1. You are relieved of any and all peace officer powers and duties;
2. You are prohibited from performing any peace officer functions on behalf of the City of Carlsbad;
3. You are not authorized to carry a concealed weapon;
4. You are required to immediately relinquish your badges, identification/access cards, Department weapons, Department radio, Department cell phone, Department computer and any and all keys to City facilities;
5. You are prohibited from entering any part of any City facility which is not open to the general public;
6. You are required to initiate telephone contact with me, daily (Monday through Friday) unless otherwise directed by Lt. Mendes or myself;
7. You are prohibited from discussing any aspect of Internal Affairs Investigation 12-17 with any employees of the City of Carlsbad (subject to a singular exception applicable to any one individual that may have been designated by you as an uninvolved representative in these proceedings). Inasmuch as you have relatives

NOTICE OF PAID ADMINISTRATIVE LEAVE AND RELATED ORDERS; IA 12-17

and/or a social relationship employed by the City, it is imperative that you understand that this particular order specifically prohibits your discussion of any aspect of this investigation with any such individual.

FAILURE TO COMPLY FULLY WITH THE PROVISIONS OF THIS NOTICE SHALL BE DEEMED AN ACT OF INSUBORDINATION, AND MAY RESULT IN DISCIPLINARY ACTION, UP TO AND INCLUDING DISMISSAL.

Received and acknowledged by (print name): Jesse Flores

Signature: 

Date: 5-3-12 Time: 1330

Chris Boyd

From: Jesse Flores
Sent: Wednesday, May 02, 2012 7:23 AM
To: Chris Boyd; Mickey Williams; Bryan Hargett
Cc: Matt Magro
Subject: CI Report 11-1853
Attachments: CI Contact Report 11-1853.pdf

To All,

Here is the report. All I ask is that if you use this in your affidavit please seal this portion. The CI and other information provided by the CI has been used in recent affidavits to begin the wire tap for our upcoming case. Compromising the CI will compromise our wire tap. Thanks for understanding. As for the CDR's of Angel Martinez's phone I'm still working on that.

Jesse

**NORTH COUNTY REGIONAL GANG TASK FORCE**

Page 1 of 1

FOLLOW-UP INVESTIGATION

| | | | |
|--|--|---|--|
| CODE SECTION AND DESCRIPTION (ONE INCIDENT ONLY) CI Contact Report | | | CASE NUMBER: CB 11-1853 |
| LOCATION OF INCIDENT San Marcos | | | BEAT NUMBER |
| DETECTIVE J Flores | | | CITY: |
| ARJIS 5355 | STATION/DIVISION North Co. Gang Task Force | INCIDENT DATE: March 7, 2012 | |
| DATE OF FOLLOW-UP March 7, 2012 | | | |
| PRIMARY VICTIM'S NAME | | PRIMARY SUSPECT'S NAME Pedro Avalos aka Petey | SUSPECT'S DOB / AGE RANGE 1989 |

Narrative:

On or about March 7, 2012, I made telephone contact with a Confidential Source (CS). During that conversation the CS informed me he/she had overheard a telephone conversation between Angel Martinez aka Claro a documented Carlsbad gang member and another person who the CS believed to be Pedro Avalos. The CS could not hear the details of their conversation and did not want to appear as if he/she was listening either. CS stated this conversation occurred during a gathering with other Carlsbad gang members. Martinez was not trying to hide the fact he was talking to Avalos. CS stated Martinez used a Nextel type phone with a push to talk feature to communicate with Avalos. CS stated they did not talk to Avalos but heard Martinez talking about Ensenada, Mexico. During that gathering, the CS later learned Avalos was in living in Ensenada Mexico with his father, who was also believed to be running from law enforcement. The CS gave me telephone number [REDACTED], stating that telephone number belonged to Angel Martinez. It is not clear if this was the telephone used to communicate with Avalos.

| | | | | | |
|--|-----------------------|---------------------------------------|---|-----------------------------------|----------------------------------|
| REPORTING DETECTIVE J Flores | ID # CB5355 | DIVISION NC Gang Task Force | DATE OF FOLLOW-UP March 8, 2012 | REVIEWED BY <i>[Signature]</i> | DATE REVIEWED 5/1/2012 |
|--|-----------------------|---------------------------------------|---|-----------------------------------|----------------------------------|

Michael Prihar
P.O. Box 3242
Granada Hills, CA 91394-0242

Tel. (818) 360-2091
Fax (818) 368-5441

In the Matter of the Appeal of

Jesse Flores,
Appellant,

and

City of Carlsbad,
Respondent.

Hearing Officer's
Opinion
and Advisory Award

Re: Appeal from Termination

The matter was submitted to the Hearing Officer pursuant to Article 22 of the Memorandum of Understanding between the City of Carlsbad (City) and the Carlsbad Police Officers' Association (RX 2) and City Administrative Order No. 70. (RX 1).¹ The matter was heard on August 19, 20 and 21, 2013, at City facilities located at 5950 El Camino Real, Carlsbad, California. The Parties were afforded the opportunity to examine and cross-examine witnesses under oath, introduce relevant evidence, and propound arguments in support of their respective positions. The hearing record was closed and the matter submitted for award following receipt and exchange of the post-hearing briefs.

APPEARANCES

For the Appellant:

Michael D. Williamson, Esq.
Stone Busailah, LLP
200 E. Del Mar Blvd., Suite 350
Pasadena, CA 91105

For the Respondent:

Frances E. Rogers, Esq.
Liebert Cassidy Whitmore
550 West C Street, Suite 620
San Diego, CA 92101

¹ Appellant and Respondent exhibits are referenced as AX and RX, respectively.

BACKGROUND

This matter involves an appeal by Jesse Flores (Appellant) following his termination from employment as a Detective for the Carlsbad Police Department (Department), effective January 6, 2013, for engaging in acts of dishonesty by making false and misleading statements to other law enforcement personnel regarding a purported “confidential informant” that had conveyed information to the Appellant about a homicide suspect’s whereabouts. The statements that triggered the Appellant’s termination were made to supervisors and a co-worker on April 27, 2012 and the days immediately following. The Appellant disputes the statements attributed to him (as well as the nature, purpose and context of the conversations at issue).

The Appellant was hired by the Department on March 6, 2006. In approximately 2008, he was assigned to the North County Regional Gang Task Force (NCGTF), which is comprised of several law enforcement agencies in the San Diego County area, including the City of Carlsbad, the City of Escondido, the San Diego County Sheriff’s Department, the United States Marshal’s Service, the San Diego County District Attorney, and other local and federal agencies.²

On March 25, 2011, a homicide occurred in the City in which an individual was attacked and stabbed to death by two suspects as he was leaving a bar. The suspects were identified as Miguel Ochoa and Pedro (aka “Petey”) Avalos (Avalos), two known gang members. Ochoa was apprehended, but Avalos remains at large. The case remained an active pursuit case within the Department’s Crimes of Violence unit, which also engaged other task forces in the pursuit of Avalos, including the NCGTF, the District Attorney’s Office and the United States Marshal’s Service. Sgt. Mickey Williams (Williams) supervised the lead investigator of the Crimes of Violence unit who was actively pursuing Avalos.

On the morning of April 27, 2012, Sgt. Williams held a meeting with other law enforcement personnel responsible for the pursuit of Avalos to discuss the known information

² In 2012, when the events triggering the Appellant’s termination occurred, the Appellant was directly supervised at NCGTF by two sergeants, Sgt. Mike Kearney (Kearney) of the Escondido Police Department, and Sgt. Scott Miedecke (Miedecke) of the San Diego County Sheriff’s Department. The Appellant’s indirect report was Sgt. Chris Boyd (Boyd), who was not a member of NCGTF but had administrative oversight over the Appellant while he was assigned to NCGTF.

1 regarding Avalos' whereabouts. The other individuals present at this meeting were Det. Bryan
2 Hargett (Hargett), U.S. Deputy Marshal Jose Olivarez (Olivarez) and District Attorney
3 Investigator (DAI) Scott Christie (Christie). Following the meeting, the Appellant allegedly
4 reported to Hargett and Christie (and within earshot of Williams) that Avalos was "in Ensenada
5 with his father." When asked by Williams (in a "first meeting") how he knew this information,
6 the Appellant allegedly stated that he had received the information within the last 30 days from a
7 "confidential informant" (or "CI"),³ who had told the Appellant that the CI overheard a
8 cellphone conversation between a gang member and Avalos in which the CI heard that Avalos
9 was in Ensenada, Mexico. The Appellant also allegedly stated that he had relayed the
10 information to a Deputy U.S. Marshal within the last 30 days but did not recall the Deputy U.S.
11 Marshal's name. The Appellant then met with his supervisor, Sgt. Boyd, (the "second meeting")
12 and also allegedly informed him that he had a CI to whom he had spoken that had information as
13 to where Avalos was located in Mexico.

14 Later that day, the Appellant met with Williams and Hargett (the "third meeting") at
15 which time the Appellant allegedly identified Deputy U.S. Marshal Steve Roncone (Roncone) as
16 the individual to whom he had reported the information about Avalos' whereabouts within the
17 last 30 days. The Appellant also allegedly stated that he "might have mentioned it to Christie."
18 However, both Roncone and Christie denied receiving such information from the Appellant. The
19 Appellant allegedly stated that the reason he had not relayed the information to anyone at the
20 Department for over a month was due to a "major brain fart."

21
22 ³ In contrast to a general informant or source, a "confidential informant" refers to an informant who is "signed up"
23 with a law enforcement agency, whereby the CI agrees to assist law enforcement by providing information or
24 participating in a criminal investigation in exchange for some benefit such as monetary compensation, relocation of
25 the informant or a family member, or leniency/reduction in sentencing. Within the Department, the process of
26 approving an individual to serve as a CI involves a detailed vetting of the individual and his/her background,
27 approval by a sergeant, and preparation of a written file on the CI that includes the CI's biographical page, criminal
28 history, a printout showing an inquiry on warrants, a waiver of City liability signed by the CI, and instructions on
how the informant must conduct him/herself. A specific identifying number is then assigned to the CI and the CI is
subsequently referred to by use of that number only. A similar process is employed at NCGTF, in which a detailed
packet of personal information, standard processing forms and a contact report describing communications with the
CI is prepared. The Appellant did not deny familiarity with these processes but asserts that the terms "informant,"
"confidential informant" and "source" (and the applicable protocols) are not used consistently or uniformly in a
manner that reflects clear distinctions.

1 Another meeting (the “fourth meeting”) was held that same day (April 27, 2012) with the
2 Appellant, Williams, Boyd and Lt. Matt Magro (Magro),⁴ during which the Appellant allegedly
3 immediately stated that he had incorrectly identified Roncone as the U.S. Deputy Marshal to
4 whom he had reported the information about Avalos’ whereabouts, and that it was actually
5 Deputy Marshal Steve Chaco (Chaco). Williams then inquired as to whether the Appellant had
6 written a report when he debriefed his CI and learned the information, and requested details as to
7 the date and time of the Appellant’s interaction with the CI. In response, the Appellant allegedly
8 stated that there was a CI contact report, but that he could not produce it to Williams because it
9 was located in a NCGTF file that was “under lock and key,” and only his NCGTF supervisors
10 (Kearney and Miedecke) could grant access to it. Williams then allegedly instructed the
11 Appellant to incorporate the facts of that report into an information report for the Department
12 under the Carlsbad police case number for the homicide, and the Appellant allegedly responded
13 that he would read the “CI contact report” that he had written in the NCGTF informant file and
14 write a report based on his review of the CI contact report. The Appellant was directed to provide
15 the report as soon as possible, and overtime was authorized for this purpose.

16 On April 30, 2012, according to the Respondent, the Appellant contacted Kearney to
17 request a CI file that was located in the secure file in Miedecke’s office, and also texted
18 Miedecke with the same request. Neither supervisor was in the NCGTF office at the time.
19 Kearney allegedly offered to come to the office to open the file for the Appellant, but the
20 Appellant allegedly declined and said he would take care of it later. Miedecke allegedly told the
21 Appellant that another lieutenant in the office (Lt. Adams-Hydar) could help him access the file.
22 That same day, the Appellant allegedly called Boyd and told him that he had not yet been able to
23 gain access to the CI file.

24 The following morning, May 1, 2012, the Appellant allegedly came to Miedecke’s office
25 and asked Miedecke for permission to open a new CI file for this same informant, on whom the
26 Appellant had requested to open a CI file several months prior (but which request had been
27

28 ⁴ Magro is the Department’s Investigative Lieutenant who manages the Crimes of Violence unit.

1 denied because the informant had been deported to Mexico, which disqualified him to serve as a
2 CI). Miedecke denied this second request because the Appellant allegedly told him that the
3 informant still had not returned to the United States.

4 That evening, the Appellant submitted a report to Kearney concerning a contact with the
5 CI and allegedly stated to Boyd that he had written the report “from his recollection” as he still
6 had not been able to gain access to the original file. Kearney signed off on the report that night.
7 The next day (May 2, 2012), the Appellant sent an email to Boyd, Williams, Hargett and Magro
8 attaching a copy of the informational report he had prepared regarding his contact with a CI,
9 which had been signed by Kearney. (RX 10). Upon reviewing the report, Boyd found it to be so
10 vague that it could not be relied upon to provide any useful information. Boyd also allegedly
11 learned at that time from Kearney and Miedecke that the subject to whom the Appellant had been
12 referring was not a “signed-up” NCGTF CI (or a Department CI) and never had been, and no file
13 on the supposed CI had ever existed. The report indicated that the Appellant obtained his
14 information from the informant “on or about” March 7, 2012, which was noted to be inconsistent
15 with the Appellant’s initial statement to Williams on April 27, 2012 that he had received the
16 information about 30 days prior.

17 At that point, Boyd submitted a Supervisor’s Complaint Summary based on his belief that
18 the Appellant had not been truthful in his statements about having documented an informant
19 contact “when in fact the subject was not a [NC]GTF informant and no such documentation had
20 occurred.” (RX 7). Boyd’s complaint led to the initiation of an Internal Affairs investigation on
21 May 3, 2012 that was conducted by Sgt. Jason Jackowski (Jackowski). (RX 8). The Appellant
22 was placed on paid administrative leave effective May 3, 2012. (RX 6).

23 The Department issued a Notice of Intent to Terminate the Appellant’s employment on
24 September 4, 2012. (RX 4). This notice informed the Appellant of his *Skelly* rights and notified
25 him of a preliminary determination that he had violated the following Department policies:

26 **Policy 340.3.5 (i):** Falsification of any work-related records, the making of misleading
27 entries or statements with the intent to deceive, or the willful and unauthorized
28 destruction and/or mutilation of any department record, book, paper or document.

1 **Policy 340.3.5 (ad):** Giving false or misleading statements, or misrepresenting or
2 omitting material information to a supervisor, or other person in a position of authority, in
3 connection with any investigation or in the reporting of any department-related business.

4 **Policy 340.3.5 (c):** Unsatisfactory work performance including, but not limited to,
5 failure, incompetence, inefficiency or delay in performing and/or carrying out proper
6 orders, work assignments or instructions of supervisors without a reasonable and bona
7 fide excuse.

8 A Revised Notice of Termination was issued on January 2, 2013 (RX 3), stating that the
9 Appellant's employment would be terminated effective January 6, 2013. This notice was based
10 on Police Chief Gary W. Morrison (Morrison)'s conclusion that, among other things:

- 11 • By the Appellant's own admission during his Internal Affairs interview with Lt.
12 Mendes and Sgt. Jackowski, the Appellant admitted that he "misled" Sgt. Kearny
13 (his immediate supervisor at NCGTF), Lt. Magro, Sgt. Boyd and Sgt. Williams,
14 and failed to be immediately forthcoming with this admission (RX 3, p. 2);
- 15 • By the Appellant's own admission, he had information regarding a homicide
16 suspect's whereabouts since March 2012 but failed to relay this information to the
17 appropriate parties at the Department. The Appellant had no reasonable
18 explanation for his failure to relay the information, and thus demonstrated a high
19 level of incompetency (RX 3, p. 2);
- 20 • From the time of the Appellant's conversation on April 27, 2012 through the
21 following days, the Appellant "consistently and knowingly obfuscated the truth,"
22 and willingly misled supervisors who were attempting to solve a heinous crime.
23 "[H]aving information of a homicide and failing to immediately report such
24 information to the immediate and appropriate parties fails to meet the public's
25 expectation of our profession and grossly fails to meet my expectations of
26 members of this department." (RX 3, pp. 2-3).

27 The Appellant does not dispute the following facts:

- 28 • The date of the alleged incidents.

- The fact that on the date of the alleged incidents he was on duty and/or in an official capacity.
- The fact that, prior to the incidents alleged in the charging documents, the informant had been rejected for formal use in the NCGTF.
- The fact that, on the dates alleged, he had conversations with Sgt. Williams, Sgt. Boyd, Det. Hargett, Lt. Magro, Sgt. Kearney, Sgt. Miedecke, DAI Christie, Sgt. Koran, or that he was interviewed by Sgt. Jackowski.
- That he wrote the documents identified as RX 10 and RX 11.
- The fact that he was ordered to write the document identified as RX 10.
- The fact that the “confidential informant files” (but not all “informant” files) at NCGTF did not contain a record of the informant in question.

However, the Appellant disputes many of the key factual allegations, including:

- The nature, purpose and context of his conversations with Sgts. Williams, Boyd, Kearney and Miedecke, Lt. Magro, DAI Christie, Det. Hargett, and all of the federal officers.
- Statements attributed to the Appellant by all persons identified above, including whether the Appellant actually used the term “confidential informant” as opposed to a mere “informant.”
- Whether the Appellant was dishonest during his conversations with the persons identified above, and/or during his Internal Affairs interview.
- The reasons, thought process and actual actions of the Appellant.
- Whether an informant file for the informant in question was ever created.
- Whether, at the time the Appellant discussed an informant file, he believed an informant file still existed at NCGTF.
- Whether the informant in question was used in the preparation of search warrant affidavits (for pen registers).
- Whether RX 10 was a proper report as written.

- Whether the Department followed the investigative and discovery requirements set forth in the Public Safety Officers Procedural Bill of Rights Act (POBRA), Cal. Gov’t Code §3300 et seq., and relevant California case law.
- Whether the Appellant was the subject of a hostile work environment that resulted in disparate treatment.

Objections by Appellant

In addition to the denial of critical elements relied upon by Respondent to support the decision to terminate, Appellant’s arguments included the following four procedural and evidentiary objections:

1. **Hearsay**: At the outset, the Appellant argued that the Department’s administrative findings, conclusions and adverse action in terminating his employment were based entirely on a review of documents, all of which were hearsay as they were taken outside of a sworn proceeding and offered in the proceeding to prove the truth of the matter asserted (and no applicable exceptions to the hearsay rule existed). Specifically, the Appellant asserted that witness statements contained in the investigative reports, the charging materials, the adjudication materials and most of the submitted exhibits were hearsay and not supported by witness testimony at the hearing. As a result, the Appellant argued, neither the documents nor the hearsay testimony that flowed from the documents are sufficient to render an adverse finding in the absence of any direct supporting evidence that would permit their use during the fact-finding process.
2. **Violation of Interrogation Rights**: The Appellant alleged that his Public Safety Officers’ Procedural Bill of Rights ⁵ (POBRA) interrogation rights were violated based on questioning by supervisors on April 27, 2012, regarding conduct that could lead to discipline.⁶ In this regard, the Appellant claimed that at least some of the questioning on

⁵ Govt. Code §3300, *et seq.*

⁶ Gov’t Code Section 3303 sets forth certain conditions under which an interrogation is to be conducted when any public safety officer is under investigation and subjected to interrogation by his or her commanding officer (or any other member of the employing public safety department) that could lead to punitive action.

that day took place at a time when it was objectively apparent that misconduct was suspected, and the Appellant was being questioned to solicit information related to misconduct, which triggered the applicability of his interrogation rights under POBRA. The Appellant thus contends that all statements and other evidence taken in violation of his rights be excluded. The Respondent refuted the claim that any violation of the Appellant's POBRA interrogation rights occurred, as he was engaged solely in routine contacts with supervisory personnel on April 27, 2012.

3. **Violation of Discovery Rights:** The Appellant argued that the Department failed to comply with its legal obligation to provide the Appellant with all materials relied upon during the disciplinary decision-making process and his discovery rights under the POBRA statute,⁷ in that the Appellant was not provided a copy of the investigation report concerning his previously-filed hostile work environment complaint – which Chief Morrison considered before issuing the Notice of Termination to the Appellant – despite the Appellant's demands for these materials. The Appellant claimed that the Respondent's failure to fully disclose all materials considered as part of the termination decision prejudiced his right to a full and fair evidentiary hearing. The Respondent denied that any violation occurred in connection with the Appellant's allegation that he was denied a copy of all materials upon which the termination decision was made. The Respondent contended that the Appellant's allegations of a hostile work environment are irrelevant to this action, as they do not prove or disprove that the Appellant engaged in the misconduct for which he is charged (nor mitigate his wrongdoing), and none of the individuals against whom the Appellant waged the allegations were involved in the decision to terminate him.

⁷Gov't Code Section 3303(g) provides, in part, "The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential."

Respondent's Arguments

The Respondent argued that there was just cause for the termination because the Appellant was untruthful to his superiors and a co-worker about the existence of a confidential informant file and then proceeded to make further dishonest statements to cover up the original fabricated story. According to the Respondent, the Appellant exhibited a pattern of untrue and contradictory statements in the aftermath of the initial April 27, 2012 conversation with Hargett, Christie and Williams, and in his administrative interview, including:

- (1) stating to his supervisors and a co-worker multiple times that he had a “confidential informant” at NCGTF, while being aware of the significance afforded to that term as distinguished from other information sources, and knowing that the subject to whom he was referring had not actually been approved as a CI;
- (2) stating to his supervisors that he had a confidential informant file locked up at NCGTF despite knowing there was no such file locked up at NCGTF;
- (3) stating to his supervisors that he had written down the substance of his conversation with the informant at the time of the communication and that this documentation allegedly was contained in a confidential informant file;
- (4) numerous inconsistent statements regarding the identity of the law enforcement personnel to whom the Appellant supposedly earlier reported the information about Avalos’ whereabouts, including misrepresentations as to whether he spoke to them directly and how the information was conveyed;
- (5) inconsistent statements regarding whether his May 1, 2012 written report was based on any prior documentation of his contact with the informant, as opposed to mere recollection;
- (6) inconsistent statements regarding the location of the purported confidential informant file, which has never been located to date;
- (7) contradictory statements as to whether or not he requested access to the confidential informant files at NCGTF;

1 (8) recanting his prior admission to the Internal Affairs investigators that he had
2 misled his supervisors by telling them there was a locked-up confidential informant file at
3 NCGTF despite knowing that was false; and

4 (9) contradictory statements as to why he waited nearly seven weeks to give the
5 information to the Crime of Violence unit.

6 The Respondent further cited several instances in which the Appellant made statements at the
7 appeal hearing that contradicted prior statements he made in his Internal Affairs interview.

8 In the Respondent's view, termination is the only appropriate discipline for continuous
9 and repeated dishonest statements by a police officer. In this case, the Respondent contended that
10 the level of discipline imposed was reasonable and not an abuse of discretion, as the
11 preponderance of evidence proved that the Appellant was dishonest and made false and
12 misleading statements which undermined his credibility and rendered him untrustworthy for
13 future service. The Respondent denied any disparate treatment in the level of discipline imposed
14 on the Appellant as compared to other officers. The Respondent thus requests that the
15 termination be upheld.

16 **Appellant's Arguments**

17 The Appellant maintained that his termination lacked just cause because there was a
18 dearth of direct, credible evidence showing that he engaged in the misconduct alleged. Rather,
19 the Appellant asserted that he was truthful from the outset in his communications regarding the
20 existence of the informant and the file, but various Department supervisors made unsupported
21 assumptions and erroneous conclusions based on his statements.

22 First, according to the Appellant, he referred to his information source as an "informant"
23 – as opposed to a "*confidential* informant" – which was meant as anyone other than an informant
24 that had been formally approved and "signed-up," and thus could be someone for whom a
25 complete written file (such as a CI file) would not necessarily exist. The Appellant contended
26 that the term "confidential informant" is not nearly as well-defined within the NCGTF or the
27 Department as the Respondent portrayed it to be, and that his supervisors mistakenly assumed he
28 was referring to a formally signed-up "confidential informant" when referring to the subject in

1 question. Second, it was not factually established that there was no written file whatsoever
2 regarding the informant at issue; to the contrary, there was evidence supporting the existence of a
3 preliminary file that may have been started on the informant at the NCGTF office until the point
4 in time when the informant was deported to Mexico, which disqualified the informant from
5 being formally approved as a CI. (The location of the file, however, was the subject of
6 reasonable confusion). In support of these claims, the Appellant relied heavily on the testimony
7 of Sgt. Kearney – who had approved the Appellant’s May 1, 2012 written report regarding his
8 contact with the informant (RX 10). Third, the Appellant claimed that he did provide the
9 information regarding Avalos’ suspected whereabouts in a timely manner about one month prior
10 to April 27, 2012, to another officer (Hoppe).

11 The Appellant also asserted that the testimony of certain Department witnesses, including
12 Boyd and Williams, was contradictory, unpersuasive, and lacking in credibility. The Appellant
13 claimed that he was the target of animosity and bias by Williams and Hargett, and the
14 uncomfortable environment they created rendered him stressed and ill at ease during the multiple
15 encounters he had with them and others on April 27, 2012 and in the aftermath. (The Appellant
16 previously submitted a hostile work environment complaint regarding these officers, about which
17 Chief Morrison testified). The Appellant further noted his lengthy career in law enforcement and
18 positive work performance with the Department, including that he had no prior sustained
19 complaint history and his evaluations reflected that he was either “meeting” or “exceeding”
20 standards.

21 In short, the statements attributed to the Appellant and resulting assumptions led to
22 numerous misunderstandings and miscommunications as opposed to any intent to mislead or
23 deceive his supervisors. Because the evidence showed that there was an informant whom the
24 Appellant was consulting, and some type of written file existed regarding the informant (of
25 which the Appellant was aware), the charges of false and misleading statements were
26 unsubstantiated and insufficient to provide just cause for the Appellant’s termination. Any
27 inaccurate statements made by the Appellant pertaining to the informant and the file were the
28 result of innocent mistakes on his part and did not constitute misleading statements.

1 The Appellant thus requests that he be reinstated to his position, in good standing,
2 without loss of pay, with immediate reimbursement of all back pay, benefits, seniority and
3 interest.

4 5 **ISSUES**

6 The Parties stipulated that the issues to be addressed by the Hearing Officer are as
7 follows:

- 8 1. Was the Appellant terminated for just cause?
- 9 2. If not, what is the appropriate remedy?

10 11 **FACTUAL STIPULATIONS**

12 The Parties entered into the following factual stipulations:

- 13 1. The Appellant's date of hire was March 6, 2006.
- 14 2. The Appellant was placed on paid administrative leave on May 3, 2012, which
15 continued until January 6, 2013, when the Appellant was terminated from
16 employment.
- 17 3. At the time of termination, the Appellant was classified as a Detective.
- 18 4. The termination was triggered by events that took place on April 27, 2012 and the
19 following days.
- 20 5. While employed, and up until the time of termination, the Appellant was a
21 tenured police officer entitled to the protections of the Public Safety Officers
22 Procedural Bill of Rights Act (POBRA), Cal. Gov't Code §3300 et seq.
- 23 6. The case number located at the upper right-hand corner of the attachment to RX
24 10 is a Carlsbad Police Department case number. (Tr. 224-25).

RELEVANT LANGUAGE

MEMORANDUM OF UNDERSTANDING (RX 2)

ARTICLE 22. DISCIPLINE OF AN EMPLOYEE

22.1 The City may only discipline regular employees for just cause. . . .

CARLSBAD POLICE DEPARTMENT POLICY MANUAL (RX 5)

DISCIPLINARY POLICY

340.3 CONDUCT WHICH MAY RESULT IN DISCIPLINE

The following list of cause for disciplinary action

340.3.5 (c) Unsatisfactory work performance, including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without a reasonable and bona fide excuse.

340.3.5 (i) The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any department record, book, paper, or document.

340.3.5(ad) Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

ANALYSIS AND OPINION⁸

Appellant raised hearsay and procedural issues (including POBRA and *Skelly*) as threshold defenses. These arguments are addressed before analyzing the substance of the record with respect to Appellant's termination. As discussed in these proceedings, this Hearing Officer presides over a *de novo*, not appellate, procedure. Thus, with respect to hearsay and Respondent's reliance upon it in terminating Appellant, no issue arises. Nothing bars Respondent from relying

⁸To concentrate on the determinative, the Hearing Officer did not summarize all evidence or contentions raised by the Parties and taken into consideration. Unless otherwise specified, all dates herein shall refer to calendar year 2012.

1 upon hearsay in making these administrative decisions; however, hearsay in the evidentiary
2 proceeding itself may not, by itself, sustain an adverse finding.

3 Appellant argues violation of his POBRA rights in two different manners. The first was
4 when he was summoned to the fourth meeting on April 27 with Sergeant Williams, Sergeant
5 Boyd, and Lieutenant Magro. Appellant asserts that Sergeant Williams had already made
6 inquiries about Appellant's statements at earlier meetings that day and believed that Appellant
7 had given false information that could subject Appellant to discipline. Thus, Appellant was
8 entitled to but did not receive protections afforded by Govt. Code §3303. Appellant argues that at
9 the final April 27 meeting, in the presence of Sergeant Williams, Sergeant Boyd and Lieutenant
10 Magro, he was asked questions related to his apparent neglect of duty, failure to notify, and the
11 issues surrounding other claims by Appellant made during earlier meetings that day. Appellant
12 argues that those questions were not of a routine contact; rather, they were the beginnings of an
13 inquiry into alleged misconduct. Appellant's arguments are based on conclusions as to Sergeant
14 Williams' potential state of mind during that fourth meeting. In contrast, relevant testimony from
15 Sergeant Williams indicates that the questioning was to “nail down what information [Appellant]
16 had and to get that information out of GTF.” (Tr. 134-135). The Hearing Officer finds that the
17 events surrounding this last meeting with Appellant on April 27 did not violate Appellant's
18 POBRA rights.

19 Appellant alleges a second violation in being denied a copy of any investigative report
20 pertaining to Appellant's earlier complaint regarding treatment by Sergeant Williams. These facts
21 also form the basis for an alleged *Skelly* violation. As Respondent noted, Chief Morrison was
22 asked by Appellant during the *Skelly* meeting to consider the complaint Appellant had lodged
23 against Sergeant Williams before the events leading to the termination. Chief Morrison did so
24 but nevertheless concluded to terminate Appellant based solely on the allegations contained in
25 the notice of intent (RX 3, 4). Thus, Chief Morrison did not rely upon the content of that report
26 in making his decision to terminate Appellant. The denial of access to the investigative report
27 and associated materials relating to Appellant's complaint did not constitute a *Skelly* violation or
28 a POBRA violation. The merits of Appellant's alleged misconduct are now considered.

1 For employer-imposed discipline to comport with a contractual just cause standard, the
2 employer must prove with a preponderance of evidence the following three elements: (1) that the
3 employee engaged in the alleged misconduct; (2) that the employee knew, or reasonably should
4 have known, that engaging in such misconduct could lead to the imposed level of discipline; and
5 (3) that the imposed level of discipline is reasonable in light of all attendant mitigating and
6 aggravating considerations.

7 Here, Respondent argues the existence of misconduct in the form of Appellant's alleged
8 dishonesty through intentionally misleading statements to supervisory personnel, as well as
9 failure to adequately convey information to his superiors. The just cause analysis of these
10 proceedings must be confined to the specific allegations contained within the charging
11 documents (RX 3, 4). The notice of termination (RX 3) alleges generally that Appellant misled
12 Lieutenant Magro and Sergeants Kearney, Boyd, and Williams. The notice of intent summarizes
13 five specific allegations against Appellant as follows (RX 4, p. 10):

- 14 1) "You 'mislead' Sgt. Williams about information . . . pertinent to an ongoing homicide
15 investigation."
- 16 2) "You delayed or chose not to share information with the COV unit which may have helped in
17 locating the homicide suspect"
- 18 3) "You 'misled' Sgt. Kearney about the need to access a GTF CI file that you knew did not exist."
- 19 4) "You mislead Sgt. Williams, Sgt. Boyd, Detective Hargett and Lt. Magro about the existence of a
20 CI file about your subject at GTF and your need to access it to create a report that was requested
21 by them."
- 22 5) "You memorialized in an official report and an email to your Carlsbad police supervisors,
23 information that you knew to be misleading, inaccurate and/or untrue."

24 The allegations, in their totality, allege that Appellant misled multiple supervisory
25 personnel with respect to the nature of an informant, the existence of a CI file, Appellant's need
26 to access it, and a report which Appellant knew to contain information that was either inaccurate,
27 misleading, or untrue. Relevant components of each allegation, and the Parties' respective
28 positions, are addressed.

The existence of an informant

At some point around early March, a male informant known to Appellant conveyed information to Appellant regarding the whereabouts of a murder suspect. This finding is supported by (1) Appellant's admission that he had received the information from this person on or about that time but forgot to convey it to Sergeant Williams, (2) Officer Hoppe's testimony that Appellant informed him at that time that he had received the information from this person (Tr. 452-53), and (3) Sergeant Boyd and Officer Hoppe's testimonies that, at one point, this person was on file as a Confidential Informant with the Vice/Narcotics Unit (VNU) (Tr. 175-76; 462).

"Confidential Informant"

Respondent argues that Appellant was dishonest when he told his supervisors that he had a "confidential informant" (CI). Sergeant Boyd's testimony regarding this informant was as follows:

Q: In fact there was a written CI package on this individual in some manner early on, way before this investigation began, wasn't there, that you are aware of?

A: Within the Carlsbad Police Vice Narcotics unit, yes.

Q: There was one within Carlsbad PD; right?

A: Yes.

Q: Detective Flores was working on that file as well; right?

A: He had a single entry in that file as far as I recall.

Q: So clearly he was aware that a CI file for this informant existed at least in some location; right?

A: Yes. (Tr. 175-76)

The record establishes that an informant existed and that a confidential informant file existed at minimum in "some location." Thus, the gravamen of Respondent's allegations must be, consistent with the notice of intent, that Appellant was dishonest specifically in claiming that he had a "confidential informant" *signed up with GTF*. To sustain this allegation, Respondent must

1 prove first that Appellant claimed that he had a “confidential informant” at GTF and second, that
2 he did so with the intent to deceive.

3 The record established the common interchange, and at some times, varying or mistaken
4 use of the terms, “Confidential Informant,” and “Informant.” For example, Sergeant Kearney,
5 who had no apparent motive to fabricate testimony, discussed how the use of the term,
6 “confidential informant,” would not necessarily lead him to conclude that an individual was
7 “signed up” through a formal process. (Tr. 214). Sergeant Kearney also described how the use of
8 the term may vary, depending on the officer. (Tr. 228).

9 Additional, and perhaps the most persuasive, evidence of accidental interchange or
10 variation in perceived meaning came from Sergeant Williams. In his Internal Affairs (IA)
11 transcript, Sergeant Williams refers multiple times to the fact that Appellant used the term,
12 “Informant,” (without the “confidential” qualifier) in his first meeting with him. (See *e.g.* RX
13 8b1, p. 7). Since no evidence suggests that Sergeant Williams intended to deceive the IA
14 investigator, it must be concluded either that Appellant did, in fact, only use that term,
15 “Informant,” in that first meeting, or that Williams really meant, “Confidential Informant,” but
16 accidentally interchanged or mistakenly used the term, “informant,” when talking with the IA
17 investigator. Indeed, even in testifying at hearing, Sergeant Williams, the only Respondent
18 witness to testify regarding the content of that first meeting, seemed to interchange the terms by
19 using “informant” again without the “confidential” qualifier:

20 Q. How did you respond?

21 A. I asked him how he learned the information of the location of Pedro Avalos.

22 Q. What did Officer Flores reply?

23 A. He stated that he had an **informant** who had overheard a telephone conversation between
24 another Carlsbad gang member and Pedro Avalos and that this **informant** had relayed to
25 Detective Flores that, by overhearing this conversation, the **informant** learned Pedro
26 Avalos was in Ensenada with his father.

27 Q. Did you respond to that statement?

28 A. Yeah. Yes.

1 Q. What did you say?

2 A. I asked Detective Flores, "Is this **informant** trustworthy? Is he credible?" And he says,
3 "Yes, he is very credible. He is a very trustworthy informant." (Tr. 37) (emphasis added)

4 Considering Sergeant Williams' testimony, the record supports the following finding:
5 contrary to Sergeant Williams' later assertions at hearing on cross examination, Appellant did *not*
6 use the "confidential" qualifier in his first morning meeting with him on April 27. For purposes
7 of discussion, *even if* Appellant had actually used the qualifier as averred in that first meeting,
8 the preponderance of evidence does not support that its use would have been derived from
9 Appellant's intent to deceive; rather, it would have come from inadvertent mistake, just as in the
10 manner it was omitted by Sergeant Williams himself, throughout his IA interview, and in this
11 proceeding.

12 While Respondent is not burdened with establishing any motive in these proceedings, the
13 presence or absence of it can provide circumstantial evidence to the issue of credibility and
14 whether Appellant would have intentionally misrepresented the facts regarding this issue. This
15 circumstantial evidence further undercuts Respondent's position.

16 The first meeting stemmed from Appellant's spontaneous *volunteering* of information.
17 Appellant would have had no motive to claim that this information was derived from a vetted
18 and "signed up" CI, as opposed to just coming from a non-vetted informant. In closing brief,
19 Respondent suggests that Appellant would have claimed to have had a CI "most likely to inflate
20 his professional ego." This speculation is not supported. The record is devoid of any evidence of
21 Appellant's proclivity in this regard. Moreover, Appellant had filed least one complaint against
22 Sergeant Williams.⁹ Regardless of the merits of that complaint, with this background and the
23 tension that may have existed between Appellant and Sergeant Williams, it is unreasonable to
24 conclude that Appellant would have fabricated this detail to Sergeant Williams, of all people.
25 Indeed, Appellant *admitted* to Sergeant Williams that passing the information to Sergeant

26
27
28 ⁹ Chief Morrison testified that, as a result of Appellant's complaint, Sergeant Williams and Detective Hargett
experienced "retraining" with respect to "getting along with others and playing well with others." (Tr. 418).

Williams had essentially slipped his mind. This behavior is not indicative of someone acting in furtherance of bolstering professional ego.

With Appellant having failed to use the term, “confidential,” in his first meeting with Sergeant Williams on April 27, he would have had no need to “cover any tracks” going into any subsequent meetings later that day. As of the second meeting with Sergeant Boyd, the evinced nature of the meeting as testified by Sergeant Boyd proves that Appellant was concerned only with his failure to share the information. (Tr. 147-48). Whether the informant was a bona fide vetted and signed up “confidential informant,” as opposed to “confidential source” or just plain “informant” would have been, and was, irrelevant during those later meetings.

With respect to the second and fourth meetings on April 27, Sergeant Boyd claimed that Appellant did use the qualifier, “confidential,” or otherwise used the term, “CI.” Given that Appellant sent an email on May 2 using the term, “CI” (RX 10), this record supports that Appellant likely used those terms in those later meetings on April 27. But as discussed with respect to the first meeting, the Appellant's use of any qualifying term or description in these later meetings is not found to be anything other than Appellant's interchange or nonspecific use in terminology. Appellant's use of the term was mistaken, at worst, and did not result from an intent to claim that the informant was, in fact, a vetted “confidential informant.” Appellant did not act with dishonesty or with the intent to deceive, when he used the term, “confidential informant.”

The existence of a file at GTF

As previously discussed, and contrary to Respondent's position, a CI file *did* exist, and its existence was established in part by Sergeant Boyd. (Tr. 175-76). Sergeant Boyd's testimony also supports and adds credibility to Officer Hoppe's previously discussed testimony regarding this informant, and it establishes that a CI file existed “in some location.” The issue remains as to whether Appellant knew that a CI file did not exist *at GTF*. Respondent argues that Appellant knew that a confidential CI file (that would be kept under lock and key) did not exist at GTF, because his efforts to sign up the informant initially had failed and that Appellant kept the file. (Tr. 630). Appellant's rebuttal is simply that he erred and, as in his IA interview statement, that

1 “there was no thought” in his statement that the file was at GTF and that the statement “came out
2 of thin air” (RX 9, p.48). The Hearing Officer must weigh the allegation and Appellant's rebuttal
3 in light of the surrounding circumstances. Ultimately, the testimony from Sergeants Williams
4 and Boyd, the absence of motive, and the sequence of events surrounding the fourth meeting of
5 April 27 all counter Respondent's assertions.

6 Sergeant Kearney's testimony supports that, in attempting to vet an informant, the
7 investigator maintains responsibility for the file until that informant is signed up. (Tr. 236-37).
8 Appellant testified that he approached Sergeant Miedecke with his paperwork regarding the
9 informant in early May in a second effort to sign him up. (Tr. 635). Sergeant Miedecke did not
10 counter this contention, either on direct or rebuttal testimony, that paperwork did exist at that
11 time. With Sergeant Miedecke also admitting to shredding documents at Appellant's desk
12 without conducting an inventory (Tr. 295-96), Respondent's argument that a file never existed by
13 virtue of the fact that one was never produced is not persuasive. The record supports that, a file,
14 or at minimum some paperwork which was being referred to as a file, did exist with respect to
15 this informant.

16 At some point during the fourth April 27 meeting, Appellant admits that he was asked to
17 provide the file regarding the informant and that he denied the request to provide the file because
18 of its confidential nature. (Tr. 564, 568). Appellant's denial was not necessarily unreasonable,
19 since whether the file was a CI file at Vice/Narcotics or at GTF, or paperwork he was cultivating
20 with respect to this informant at GTF, it would have nevertheless been confidential in nature.
21 Appellant was then instructed to write a report, and it was agreed that he would provide the
22 report on the following Thursday [May 3].

23 According to Appellant, it was when he was asked to provide his report sooner that he
24 asserted that he would be unable to do so, because, first, he was due in court from Monday
25 through Wednesday, and second, as he believed, the file was “locked up in the supervisor's
26 office.” (Tr. 568). This testimony is supported by Sergeant Williams, when he testified as
27 follows:

28 Q: And when you asked Officer Flores if he had prepared a report, what was his response?

A: **He said, “I’m sure I did. It’s in the notes, and it’s in the file.”**

Q: Do you know what file he was referring to?

A: I assumed he was referring to the informant file. . . . I said, “I want a copy of that report.” And he told me, “I can’t give you a copy of the report because it’s a GTF report.” . . . I said, “Then I want you to incorporate the facts of that report into an informational report for Carlsbad Police Department . . .”

Q: And how did Officer Flores respond?

A: He said that he would do that. And **I asked him when I could get the information**, when he expected to get the information, and I believe we were - - the 27th was either a Thursday or Friday. And he looked at his phone and his calendar, and **he said he had court, I believe, Monday through Wednesday. So Thursday was the earliest he could get it to us.** During the discussion of the timing, **Sergeant Boyd said, “Overtime is authorized to get it, because the sooner is better with this information.” And Detective Flores explained that the file was under lock and key** and that his supervisor at the gang task force had to grant him access (Tr. 49-50) (emphasis added)

The testimony establishes that it was *after* Sergeant Boyd mentioned that he would authorize overtime to expedite receiving Appellant's report, that Appellant also mentioned, in addition to his court conflicts, how the file was kept under “lock and key.”

The testimony establishes that, at the time Appellant claimed that the file was under “lock and key,” Appellant had already averred (1) that a file existed, (2) that he would refer to it in writing a report, and (3) that he would be unable to provide the report until Thursday, May 3. Following Respondent's argument, Appellant is already presumably “locked in” to his claim that a file exists and that he will have to provide a report based on it by the following week. It is difficult to understand why Appellant, at this point, would have had any motivation to claim an additional, unneeded, and *knowingly false* reason of his inability to provide the information any sooner (vis-a-vis, a file locked away), especially since Sergeants Williams and Boyd had already established the Thursday delivery date. Appellant would have had no motivation to make an additional *false* claim that the file was under lock and key at this point. Moreover, it is difficult to

1 understand what motive Appellant would have had to *continue* to claim after that meeting and
2 until the evening of May 1, that the file was locked away, especially when considering that the
3 Thursday May 3 submission date was not changed after Appellant made the statement about the
4 file being under lock and key. Indeed, if Appellant had fabricated the existence of a file as
5 Respondent suggests, he would have more reasonably submitted the same information he
6 ultimately submitted (RX 10) without also fabricating the need to access a file existing
7 specifically under lock and key.

8 Following that April 27 meeting, Appellant did contact both Sergeants Kearney and
9 Miedecke in an effort to access the confidential file. (Tr. 218, 276). While the record supports
10 Appellant's general competency, it is unlikely that Appellant would have been sophisticated
11 enough, or would have had the foresight necessary, to bolster his claim by calling two
12 supervisors in order to *feign* the fact that a file actually existed and that he believed such to be
13 the case. On the other hand, if, as Respondent contends, Appellant would have been
14 sophisticated enough to fabricate such urgent need for access to a file he knew did not exist, then
15 certainly he would have also had the sophistication to avoid contacting them *at all* and simply
16 generated the submitted report based on his own recollections. It is difficult to understand what
17 would have prevented Appellant, assuming he was as sophisticated as Respondent claims him to
18 be, from simply going back to the office and writing the report without alerting *anyone*.

19 Respondent argues that Appellant knew there was no file under lock and key as early as
20 the morning of May 1, and certainly by the time he wrote his report later that evening, by virtue
21 of his meeting with Sergeant Miedecke that morning and the fact that, in that meeting, he only
22 asked to sign up the informant and did not request to access the file. The record does not support
23 the timing of that meeting. Rather, the record supports that it occurred on May 2, *after* the
24 Appellant had already submitted the report.

25 Sergeant Miedecke contends that Appellant approached him on the morning of Tuesday,
26 May 1. (Tr. 292). However, Sergeant Miedecke's testimony conflicts with his own statements in
27 his IA interview, in which he was unsure whether Appellant had approached him on that
28 morning or on the morning of May 2, earlier in the day prior to Sergeant Miedecke's

1 conversation with Sergeant Boyd. (RX 8b1, p. 56) (“It was either that day or the day before.”).
 2 Sergeant Miedecke's testimony also conflicts with that of Sergeant Boyd, who said that
 3 Appellant had requested to “certify” the informant as a CI “that day, that Wednesday [May 2].”
 4 (Tr. 173). Statements made in IA interviews that later turn out to be incorrect may be the result
 5 of mistake and not necessarily the result of intentional fabrication, and no evidence suggests that
 6 Sergeant Miedecke did, or would have had any motivation to, fabricate statements during this IA
 7 interview. Nevertheless, with the corroborating testimony from Sergeant Boyd regarding
 8 Appellant's request to certify the CI on May 2, the conflicts between Sergeant Miedecke's
 9 testimony and his IA statements made earlier in time to the incidents at issue here cannot be
 10 ignored. With Appellant counter-claiming that the meeting occurred on May 2 (Tr. 634), and not
 11 on May 1, the Respondent has not established that this meeting occurred on May 1, further
 12 supporting Appellant in good faith believed that a locked file existed until he discovered it at his
 13 desk on the evening of May 1.

14 Respondent also argues that, by virtue of his statements in his IA interview, Appellant
 15 admitted that he knew a file did not exist under lock and key as of April 27. The interview
 16 portion cited by Respondent is repeated, but other portions are also replicated below in order to
 17 provide context:

18 A: . . . It, it, that, that was never my intentions at all. **A, did I intentionally try to mislead**
 19 **them? Absolutely not.** I, I've been regretting it the second it came out, and I, and I made
 20 a bad mistake for us.

21 Q: What have you been trying to regret? What bad mistake did you make?

22 A: The meeting with Sergeant Williams and **misleading him** about, the file, trying to buy
 23 myself some time. . . . (RX 9, p.47)

24 At this point, it is clear that Appellant is admitting only that things he said may have misled his
 25 superiors, not that he *intentionally* misled them. The Hearing Officer interprets Appellant's use of
 26 “buying time,” not as an admission, but rather, as with the location of the file, Appellant regrets
 27 *giving Sergeant Williams the impression* that he was attempting to “buy time.” And this
 28 interpretation is not inconsistent with Appellant's testimony that he was referring to the fact that

1 Sergeant Williams had agreed to a “time frame [in which to provide the report]” (Tr. 650), which
2 allowed Appellant the time to which he was referring. The questioning continued, along with the
3 use of the term, “misleading”:

4 Q: In an earlier part of our conversation you only said that you misled Sergeant Kearney
5 instead of saying that when you provided that information to Lieutenant Magro, Sergeant
6 Williams, and Sergeant Boyd, that you met, misled them as well regarding the, the
7 existence of a former confidential informant file?

8 A: In that meeting there wa (sic), it wasn't where **I said that it was gonna be. The file**
9 **wasn't in GTF locked up. I had it with me.**

10 Q: Wouldn't it have just been, just as easy to say, “I have the file with me, but I can't provide
11 you with this inf (sic), I want to talk to my supervisors at GTF prior to providing you
12 with the information?”

13 A: In **hindsight**, yes. . . .

14 Q: So did you feel that you had to mislead them in order to appease them later?

15 A: **No.**

16 Q: . . . to provide them the information?

17 A: **No.** By me saying that the file was at GTF. There **was no thought in that.** That was, that
18 came out of thin air. (RX 9, p. 47-48) (emphasis added)

19 At this point again, Appellant is not admitting an intent to mislead. Rather, he is admitting that
20 the file was not locked up at GTF as he believed it to be. Appellant's statement is no more
21 persuasive that he knew at the time that he had the file with him and stated otherwise than it is
22 that in hindsight, the file ended up being in his possession despite his sincere belief that the file
23 was locked away. At worst, given the complaints Appellant made against Sergeant Williams, the
24 statement was made recklessly in that April 27 meeting and as a result of the stress he may have
25 felt in that meeting with superiors. The questioning continues:

26 . . .

27 Q: So you told them that that a document exists, that never existed. **A file existed, that**
28 **wasn't the confidential informant file that only existed in your own possession.**

1 . . .

2 Q: Is that, is that accurate?

3 A: That was misleading, yes. (RX 9, p. 49) (emphasis added)

4 Again, the questions and answers do not prove with a preponderance that Appellant is admitting
5 to intentional deception. The statements could just as easily be interpreted, given Appellant's
6 prior answers, that yes, he made a statement that ended up proving to be false. Indeed, the
7 statement actually corroborates Appellant's consistent testimony, in which he asserted that he
8 believed that a file existed, that it was locked up, and that he ultimately realized on the evening
9 of May 1 that he had it in his possession.

10 Until its discovery on the evening of May 1, Appellant believed in good faith that the file,
11 or paperwork that was being referred to as a file, existed under lock and key at GTF. Whether
12 Appellant's belief was rational or not does not establish Appellant's intent to convey false
13 information. Dishonesty requires that the individual *knowingly* make a false statement with the
14 intent to deceive. The act of dishonesty does not include making an erroneous statement without
15 such knowledge and without the requisite intent to deceive. This record does not support, and
16 this Hearing Officer does not find, that Appellant acted with the intent to deceive in claiming
17 erroneously that the file was under lock and key.

18 Sharing information

19 To the extent that it is encompassed within the allegation of misleading Sergeant
20 Williams about information pertinent to a homicide investigation, Respondent argues that
21 Appellant was dishonest in relaying to whom he had provided information about the male
22 informant in an effort to “cover for the fact that he waited over 52 days to provide the
23 information” (Respondent Brief). Notwithstanding Officer Hoppe's testimony establishing that
24 Appellant had relayed the relevant information sometime in March or early April (Tr. 452-53),
25 Respondent's argument is belied by the fact that Appellant *admitted* to Sergeant Williams on
26 April 27 to having forgotten to convey the information to him sooner. Even assuming Appellant
27 had not told Officer Hoppe, he would have had no motivation to cover for anything at that point
28 given his admission, and certainly no motivation to lie about *to whom* he had previously shared

1 the information. Appellant apparently even failed to recall that he had contacted Officer Hoppe;
2 thus, the record does not support with a preponderance of evidence anything but Appellant's
3 failure in memory and his good faith efforts to determine with whom he had shared the
4 information.

5 Other statements

6 Respondent alleges that Appellant made a number of dishonest statements in his IA
7 interviews, including whether he wrote a report from his recollection, his reason as to why he
8 failed to notify Sergeant Williams, whether he initiated the fourth meeting or whether he was
9 summoned, and whether he asked Sergeant Miedecke for access to a CI file. As discussed
10 previously, these proceedings are limited to specific allegations within the charging documents.
11 These allegations of dishonesty during Appellant's IA interview were not charged; thus, they are
12 not considered in this just cause analysis. To the extent Respondent argues that any
13 inconsistencies should impact Appellant's credibility, the Hearing Officer has considered these
14 statements in light of the totality of the record, and rejects that they derive from intent to deceive.

15 Appellant's stated to Sergeant Kearney that he wrote the report "from his recollection."
16 To be false, the statement must come from Appellant's intent to convey that he wrote the report
17 from *only* his recollection. With Appellant's admission that he had to access his notes with
18 respect to another female informant (Tr. 539-540), the Employer has not proved that Appellant's
19 report is completely devoid of having to rely on his memory in some aspect or another with
20 respect to his conversation with the male informant.

21 In Appellant's IA interview cited by Employer regarding the existence of a file, the
22 evinced line of questions and answers supports that Appellant was contending, not that no file
23 existed, but that he had nothing but scratch papers regarding the documentation of his
24 conversation with the male informant at issue here. Appellant answers the following question:

25 Q: So, no file, no **report** exists **where you actually documented the conversation . . . ?**

26 A: Nothing prior to that, no. (RX 9, p.27) (emphasis added)

27 Appellant's contention is consistent with the fact that he would have had to have relied on
28 his notes from the other female informant and on his memory that the conversation with the male

informant occurred on the following day or sometime thereafter (Tr. 539-40). It is possible that Appellant interpreted the question (and reasonably so) to apply, not necessarily to an entire file, but to a “report” in which he specifically documented the a conversation with the male informant. Moreover, Appellant would have had no reason to contend that a file *did not* exist, when, as Respondent recognizes, throughout the time frame of the April 27 conversations, he was contending the exact opposite. The answers to the line of questioning are not internally inconsistent or inconsistent with his testimony at hearing. Appellant was not dishonest in this line of questioning.

Respondent argues that Appellant lied about the reason for failing to provide the information to the COV unit. According to the Respondent, though Appellant claims multiple times that he had forgotten, Appellant contradicted this claim when testified that he failed to provide the information because of conflicts he was having with Sergeant Williams. (Tr. 540-41). However, a reading of the relevant line of questioning below leads this Hearing Officer to a different conclusion:

Q: In addition to telling Steve Chaco about the information on Petey Avalos' whereabouts, did you discuss the information that the informant provided you with a member of Carlsbad P.D.?

A: Yes.

Q: Who was that?

A: Eric Hoppe.

Q: And do you know about when you discussed that with Hoppe?

A: It had to be around the same time of this report, the date in the report, anyway.

Q: Okay. The date being March 7th?

A: Somewhere around there, yes.

Q: Okay. **Why did you discuss the information with Hoppe as opposed to going directly to Crimes of Violence unit and discussing it with them?**

A: A couple of reasons. Hoppe was my counterpart at the gang task force. He was the in-house gang detective. Hoppe had given me this informant. Him and Hoppe had a close

1 relationship. I knew they still kept in contact. So when I called Hoppe to see if he may
2 have heard the same thing from the guy, he hadn't, so we talked about it. And because
3 Lowe was already aware of all the conflict that came out of the relationship with COV,
4 we had made the determination that any information -- most of the information flowed
5 through Eric just to make it seamless and it wouldn't be scrutinized. So Eric was the one.
6 (Tr. 540-41)(emphasis added)

7 The transcript reveals that Appellant was answering only as to why he *initially* went to Officer
8 Hoppe as opposed to going directly to the COV unit. Neither the question as posed, nor the
9 response, discounts Appellant's consistent claim that he also *subsequently* forgot to convey the
10 information to Sergeant Williams after being suggested to do so by Officer Hoppe. Nothing
11 contradicts Appellant's contention that he ultimately forgot as claimed.

12 The evidence establishes, through the testimony of Sergeant Williams and Sergeant
13 Boyd, that the fourth meeting was called, possibly by Lieutenant Magro, specifically to discuss
14 the information related to the alleged informant. (Tr. 45-46; 149). Respondent argues that
15 Appellant claims at hearing that he was summoned to the fourth meeting with Sergeant Boyd and
16 Lieutenant Magro but that, in his IA interview, Appellant contends that *he* initiated the meeting
17 because of hostile environment being cause by Sergeant Williams and Detective Hargett (EX 9,
18 p. 17). Appellant's contention in his IA interview of whether he initiated meeting with Sergeant
19 Boyd or whether he was summoned would have been ultimately of no consequence at that time
20 he was interviewed. Any discrepancies are attributed to a failure in memory only or possibly to
21 Appellant's recollection that he would have wanted to discuss the issue of his alleged "hostile
22 environment" while in that meeting. The record does not support Appellant's intent to deceive on
23 this issue, and the discrepancy does not negatively impact his credibility.

24 With respect to the IA questioning relating to Appellant's request for access to files, the
25 line of questioning cited by Respondent is as follows:

26 Q: Um, at any time did you contact Sergeant Miedecke and ask him for access to the
27 confidential informant file?

28 A: No. Access to, no. We talked about files, but I didn't ask him to access. (EX 9, p. 25)

Respondent argues that these statements in his IA interview contrast with Appellant's testimony, in which he states that he *did*, in fact, contact Sergeant Miedecke to ask for access to a CI file on May 1 (Tr. 650). But examination of the IA transcript directly following the question and answer cited by Respondent reveals the following:

Q: And what did you, what was your conversation with Sergeant Miedecke about the file?

A: That conversation with Sergeant Miedecke was, I told him what I had. I had the same guy that he's been aware of. I tried to sign him up once before, but he got deported. So I didn't, so I, I returned the CI number. So I was goin' through the process of signing this guy up, and, at the G.T.F. I told Sergeant Miedecke what I had, and Sergeant Miedecke said, "Well, we're not going to sign him up, but you can keep a file on him." And so that's what I did. That's what I continued to do. (EX 9, p. 25)

When Respondent-cited portions are read in proper context of the questions and discussion that follow, it is clear that Appellant is discussing, *not* his attempts via text (Tr. 276) to access the file, but rather whether he attempted to access the file during his first and second conversations he had with Miedecke when attempting to sign up the informant. Sergeant Miedecke corroborates this testimony in describing how Appellant tried to vet the informant initially but later had to return the CI number, when he discovered that the male informant had been deported to Mexico. (Tr. 278-79). Sergeant Miedecke also corroborates that Appellant did attempt to sign up the informant again in that May meeting. (Tr. 277). Appellant, in his IA interview would have had no reason to deny that he attempted to contact Sergeant Miedecke to access a file, especially given that the truth of that assertion could be easily tested. Appellant's answer in the IA interview evinces only Appellant's line of thought regarding his multiple attempts to open a CI file with this informant. It does *not*, as Respondent contends, contradict Appellant's testimony that he attempted to contact Miedecke in order to access paperwork, which he believed was locked away.

The report (RX 10)

As a final substantive matter, combined with Sergeant Kearney's ultimate approval of the report submitted by Appellant (RX 10), the record does not support that information contained

1 therein was misleading, false, or inaccurate. Even if the report contained inadvertent
2 discrepancies with respect to whether the informant was called a “CI” or “CS,” or inaccuracies
3 with respect to specific time frames (Appellant's use of “on or about”), Sergeant Kearney
4 reviewed that same report and approved it. To terminate Appellant's employment based on these
5 same discrepancies would be an arbitrary imposition of discipline and not for just cause.

6 In sum the record supports that, in the midst of what appears to be a series of
7 miscommunications, Appellant made a good faith effort to provide information requested from
8 superiors, information which he initially believed was contained in a secure file in his
9 supervisor's office. To the extent that Appellant has violated any code of conduct within the
10 Carlsbad Police Department (EX 5), only Policy 340.3.5(c) is implicated through Appellant's
11 oversight by not notifying Sergeant Williams regarding the information from the male informant
12 sooner in time to when he discovered it. Appellant's realization that he forgot to convey the
13 information (or had a “brain fart” as he described) conveys his knowledge that he needed to do
14 so. However, the extent of this oversight is mitigated by the fact that Appellant did convey this
15 information to another officer, in this case Officer Hoppe, who had ties to this informant and by
16 the fact that Officer Hoppe conveyed this information and Appellant's involvement to Sergeant
17 Williams at the time he (Officer Hoppe) learned of it. (Tr. 450, 454). In other words, Sergeant
18 Williams already had the same information about Avalos’ potential movement to Mexico before
19 the April 27 meeting in which Appellant shared that information. What the Appellant disclosed
20 was not new information. Hoppe’s testimony gives rise to a question as to why Sergeant
21 Williams, upon now hearing the same information from Appellant, did not tell Appellant that he
22 already received the information from Officer Hoppe. It is possible that Sergeant Williams, in
23 failing to understand how Appellant had received this information (Tr. 36-37), had forgotten
24 about receiving the information from Officer Hoppe. And if so, Appellant’s alleged policy
25 violation through any alleged inefficiency or incompetency is comparable to Sergeant Williams
26 forgetting this information, thereby contributing to the ensuing confusion in communications. No
27 evidence supports that Sergeant Williams was ever disciplined regarding his forgetfulness here.

Thus, any resulting discipline for this Policy violation given these facts would be arbitrary and not for just cause. Respondent has failed to sustain its burden on all charges.

ADVISORY AWARD

1. Appellant was not terminated for just cause.
2. Appellant is to be reinstated with back pay and all benefits.
3. Any back pay shall be adjusted for any interim income where such income would not have been realized but for Appellant's separation from employment.
4. Appellant's personnel records shall be modified in a manner not inconsistent with this Award.



Michael Prihar,
Hearing Officer
Date: February 23, 2014
Los Angeles, California